135-161

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1889.**

No. 1219.

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HENRY LYNG, PLAINTIFF IN ERROR,

*vs.*

THE PEOPLE OF THE STATE OF MICHIGAN.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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FILED SEPTEMBER 5, 1889.

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1 STATE OF MICHIGAN, } ss :
*County of Iron,* }

The complaint of Manville B. Wait, of Iron River village, taken and made before me, Wm. J. Brown, a justice of the peace of Iron River township, in said county, the 19th day of July, A. D. 1888, who, being duly sworn, says that heretofore, to wit, on the 19th day of July, A. D. 1888, at the township of Iron River and in the county aforesaid, Henry Lyng, then and there being, was a person whose business consisted in keeping and offering for sale brewed and malt liquors at wholesale, as agent for Hagemeister & Son, of Green Bay, Wis., without neither he nor they having paid the tax required by law upon the business of selling and offering for sale said liquors, he not being a druggist selling liquor for chemical, scientific, mechanical, or sacramental purposes only and in strict compliance with the law, according to the form of statute in such case made and provided.

Wherefore the said Manville B. Wait prays that the said Henry Lyng may be apprehended and held to answer complaint and further dealt with in relation to the same as law and justice may require.

MANVILLE B. WAIT.

2 Taken, subscribed, and sworn before me the day and year first above written.

WM. J. BROWN,
*Justice of the Peace.*

*Warrant.*

STATE OF MICHIGAN, } ss :
*County of Iron,* }

To the sheriff or any constable of said county, Greeting:

Whereas Manville B. Wait hath this day made complaint to me, Wm. J. Brown, a justice of the peace of the township of Iron River, in said county, that heretofore, to wit, on the 19th day of July, A. D. 1888, at the village of Iron River, in the county aforesaid, Henry Lyng, then and there being, was a person whose business consisted in keeping for sale brewed and malt liquors at wholesale, as agent for Hagemeister & Son, of Green Bay, Wisconsin, without either he or they having paid the tax required by law upon the business of selling and offering for sale said liquors, he not being a druggist selling liquors for chemical, scientific, medicinal, mechanical, or sacramental purposes only and in strict compliance with law, contrary to the statute in such case made and provided;

And whereas, on examination on oath of the said Manville B. Wait by me, the said justice, it appeared to me, the said justice of the peace, that said offense had been committed, and there is just cause to suspect the said Henry Lyng to have been guilty thereof: Therefore, in the name of the people of the State of Michigan, you and each of you are hereby commanded forthwith to take the said

Henry Lyng and bring him before me, the said justice of the peace, to be dealt with according to law.

Given under my hand and seal, at the township of Iron River, in said county, on the 19th day of July, A. D. 1888.

WILLIAM J. BROWN, [L. S.]
*Justice of the Peace.*

3 *Bond.*

STATE OF MICHIGAN, } ss:
*County of Iron,* }

Be it remembered that on the 26th day of July, A. D. 1888, Henry Lyng, of Iron River, in said county, and Charles Lorenz and Frank Comins, in said county, personally came before me, Wm. J. Brown, a justice of the peace in and for the said county of Iron, and severally and respect*fully* acknowledged themselves to be indebted to the people of the State of Michigan in the sum of four hundred dollars each, to be levied of their respective goods and chattels, lands and tenements, to the use of the said people, if the said Henry Lyng shall make default in the condition following:

Whereas the said Henry Lyng was charged before me, the above-named justice, upon the oath of Manville B. Wait, for that on the 19th day of July, 1888, at Iron River village and in the county aforesaid, Henry Lyng, then and there being, was a person whose business consisted in keeping and offering for sale brewed and malt liquors at wholesale, without having paid the tax required by law upon the business of selling and offering for sale said liquors, he not being a druggist selling liquors for chemical, scientific, medicinal, mechanical, or sacramental purposes only, and in strict compliance with the law, contrary to the statute in such case made and provided:

And whereas the said Henry Lyng waived examination in justice court — desired to go to circuit court for the county of Iron without said examination in justice court: Therefore the condition of this recognizance is such that if the said Henry Lyng shall be and appear personally at the next term of the circuit court, to be held in and for the county of Iron on the — day of ——, A. D. 1888,
4 at Crystal Falls, in said county, then and there to answer to an information to be filed against him for the offense above mentioned, and to do and receive what shall by the court be then and there enjoined upon him, and shall not depart the court without leave, then this recognizance to be void; otherwise to remain in full force and virtue.

HENRY LYNG. [SEAL.]
CHAS. LORENZ. [SEAL.]
FRANK COMINS. [SEAL.]

Taken, subscribed, and acknowledged before me the day and year first above written.

WM. J. BROWN,
*Justice of the Peace.*

I hereby certify that the sureties to the above recognizance justified their pecuniary responsibility as such on oath before me—

WM. J. BROWN,
*Justice of the Peace.*

*Copy of Justice's Docket Entries.*

STATE OF MICHIGAN, } ss:
*County of Iron,* }

THE PEOPLE } ss:
*vs.*
HENRY LYNG. }

In justice court, before Wm. J. Brown, one of the justices of the peace in and for said county.

July 19th, 1888.—On complaint of M. B. Wait, marshal of the village of Iron River, a warrant was issued for the arrest of said Henry Lyng.

July 19th, 1888.—The accused was brought into court. The warrant being read to him, he plead not guilty, and waived examination in justice court and went to circuit court.

Prisoner was ordered by me to furnish a bond for his appearance at circuit court for the county of Iron at its next session, with two sureties, each in the sum of four hundred dollars.

*Justice's Return.*

STATE OF MICHIGAN, } ss:
*County of Iron,* }

I, the undersigned, Wm. J. Brown, one of the justices of the peace in and for said county, do hereby certify and return to the circuit court of the county of Iron aforesaid that on the 19th day of July, 1888, one Manville B. Wait, of Iron River village, made complaint to me that Henry Lyng, then and there being, was a person whose business consisted of keeping and offering for sale brewed and malt liquors at wholesale without having paid the tax required by law upon the business of selling and offering for sale said liquors, he not being a druggist selling liquors for chemical, scientific, medicinal, mechanical, or sacramental purposes only, and in strict compliance with the law, contrary to the form of the statute in such case made and provided.

And it appearing to me, the said justice of the peace, that said offense had been committed, I issued a warrant directed to the sheriff or any constable of said county and commanding such sheriff or constable forthwith to arrest the said Henry Lyng and bring him before me to be dealt with according to law; which said warrant was returned on the same day (July 19th) to me by Manville B. Wait, one of the constables of the township of Iron River, in said

county, with the body of the said Henry Lyng in his custody. As well *as* the said Henry Lyng as the said Manville B. Wait
6 appeared before me, and the charge made against the said Henry Lyng, as stated in the warrant to arrest, was distinctly read to him, the said Henry Lyng, and he being required by me to plead thereto said that he was not guilty thereof and waived his examination in said justice court.

I, the said justice, thereupon ordered that the said Henry Lyng should furnish a recognizance in the sum of four hundred dollars, with two sureties, for his appearance at the next term of the circuit court of the county of Iron; which recognizance was furnished by said Henry Lyng, with Charles Lorenz and Frank Comins as sureties, and which is herewith returned with all the proceedings had in said case before me.

Given under my hand and seal this 26th day of July, A. D. 1888.

W. J. BROWN, [SEAL.]
*Justice of the Peace.*

*Information.*

STATE OF MICHIGAN, } ss:
*Iron County,* }

The Circuit Court for the County of Iron.

Cyrus T. Crandall, prosecuting attorney in and for the county of Iron aforesaid, for and in behalf of the people of the State of Michigan, comes into said court in the September term thereof, in the year A. D. 1888, and gives it here to understand and be informed that on the 19th day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the village of Iron River, in said Iron county, Henry Lyng, then and there being, was a person whose business consisted in part of selling at wholesale brewed and malt liquors (not proprietary patent medicine), as agent for Franz
7 Hagemeister and Henry Hagemeister, copartners doing business in the city of Green Bay, Wisconsin, under the firm name of Hagemeister & Son, without he or they having paid in full or in part the tax required by law to be paid upon the business, neither he nor they being druggists selling liquors for chemical, medicinal, or sacramental purposes only and in strict compliance with the law—

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the people of the State of Michigan.

CYRUS T. CRANDALL,
*Prosecuting Attorney in and for the County of Iron, Mich.*

STATE OF MICHIGAN, } ss:
*County of Iron,* }

Cyrus T. Crandall, being duly sworn, deposeth and says that he knows the contents of the foregoing information by him subscribed, and verily believes the same to be true as therein set forth.

CYRUS T. CRANDALL.

Sworn to and subscribed before me this 18th day of September, A. D. 1888.

P. E. DUNN,
*Clerk of the Circuit Court, Iron County, Mich.*

Endorsed: "Witnesses: Manville Wait, Martin Lally." "Filed this 18th day of September, A. D. 1888, in the September term. P. E. Dunn, clerk."

*Copy of Journal Entries.*

The Circuit Court for the County of Iron.

At a general term of the circuit court, continued and held, at the opera-house, in the village of Crystal Falls, in said county,
8 on the eighteenth day of September, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The Hon. Claudius B. Grant, circuit judge.

The court opened for business in due form.

THE PEOPLE OF THE STATE OF MICHIGAN *vs.* HENRY LYNG. } Information for Selling Beer without License at Wholesale.

Henry Lyng, the respondent in this cause, having been arraigned at the bar in open court, and the information read to him by Cyrus T. Crandall, prosecuting attorney, pleaded thereto not guilty.

Thereupon came a jury, to wit, John Morrison, John Corbitt, A. J. Harding, John Burt, Olaf Helgemo, William Hunter, Barney McLaughlin, Thomas Gallivan, Herman Raw, John F. Minckler, Charles Olsen, Michael Corcoran, who were duly empaneled, tried, and sworn well and truly to try and true deliverance make between the people of this State and the prisoner at the bar whom they should have in charge, according to the evidence and the laws of this State, and, after having heard the proofs and allegations of the parties, the arguments of counsel, and the charge of the court, retired from the bar under the charge of John S. McLean, an officer of the court, to consider of their verdict to be given, and after being absent for a time return into the court and say, upon their oath, that they find the said Henry Lyng guilty in manner and form as the said people hath in their information in this cause charged.

And thereupon, on motion of Phillips and Thompson, attorneys for defendant, C. T. Crandall appearing for the people, it is ordered that the defendant have sixty days to move for a new trial and to settle a bill of exceptions, and that judgment upon the verdict be
9 stayed, and that the defendant be admitted to bail in the sum of two hundred dollars.

C. B. GRANT,
*Circuit Judge.*

The Circuit Court for the County of Iron.

THE PEOPLE OF THE STATE OF MICHIGAN
*vs.*
HENRY LYNG.

*Bill of Exceptions.*

At a session of said court, held at the court-house, in the village of Crystal Falls, in said county, on the 18th day of September, A. D. 1888, before the Honorable Claudius B. Grant, judge of said court, the issue joined between the parties in this cause came on to be tried by a jury of said county, for that purpose duly empaneled, good and lawful men of said county, on which day there came there as well the said people as the said defendant, by their respective counsel, and upon the trial of said issue the following facts, being all the facts attempted to be established upon said trial by either party, were admit d to be true by both of the said parties, to wit:

1. Franz Hagemeister and Henry Hagemeister are citizens of the United States of America and reside at the city of Green Bay, in the State of Wisconsin, and are engaged in the manufacture of lager beer, under the name of "Hagemeister & Son," at Green Bay aforesaid, where they have a brewery for the manufacture thereof.

2. Such lager beer is brewed liquor within the meaning of act No. 313 of the laws of Michigan for 1887.

3. Said Hagemeister & Son own a warehouse in the village of Iron River, in the township of Iron River, in the county of Iron and State of Michigan, where they store quantities of their lager beer so made by them at Green Bay aforesaid, and from there shipped to their said warehouse in said village of Iron River, to be there stored and disposed of.

4. The defendant, Henry Lyng, is employed by said Hagemeister & Son as their agent, on a regular salary, to look after their said warehouse, to take orders for and deliver said beer, so manufactured and stored, in quantities exceeding three gallons, and to collect and remit the proceeds of the sales thereof to said Hagemeister & Son, and was so employed on the 19th day of July, 1888.

5. On the 19th day of July, 1888, at the village of Iron River, in the county of Iron and State of Michigan, said defendant, in the course of his said employment by Hagemeister & Son, did deliver from said warehouse to Martin Lally and to divers other persons, all of whom paid him therefor, certain of said lager beer, so made and shipped by Hagemeister & Son from Green Bay aforesaid, in quantities exceeding three gallons. All of said lager beer was so delivered in the original packages in which it had been shipped. The defendant sold no other liquors.

6. Neither the said defendant nor the said Hagemeister & Son, or either of them, have paid any tax in the village of Iron River aforesaid on the business of selling or keeping for sale malt liquors at wholesale or at wholesale and retail, nor given any bond such as is mentioned in act No. 313 of the Public Acts of Michigan for 1887.

And thereupon the people rested their case.

And thereupon the defendant rested his case.

11 And thereupon the defendant, by his counsel, requested the court to instruct and charge the jury to find a verdict of not guilty.

But the said circuit judge did then and there decline and refuse to instruct and charge the jury as requested by the counsel for the defendant.

And thereupon the counsel for the said defendant did then and there duly except to the said refusal of the said circuit judge to instruct and charge the jury as requested by the defendant.

And the said circuit judge did then and there instruct and charge said jury as follows:

GENTLEMEN OF THE JURY: The statute of this State, passed by the Legislature of 1887, is entitled "An act for the taxation and regulation of the business of manufacturing, selling, keeping for sale, furnishing, giving, or delivering spirituous and intoxicating liquors and malt, brewed, or fermented liquors;" and this statute goes on to provide the different taxes that each person engaged in the different branches of the business shall pay.

A retailer is to pay $500. A wholesaler of malt and brewed liquors is to pay $300; a wholesaler of spirituous and intoxicating liquors, $800. A manufacturer of malt and brewed liquors is to pay $65.

Such, in brief, are the provisions of this law. This law provides also that a man shall also pay the tax in as many places as he carries on the business. If the wholesaler in Menominee carries on business there or business in Crystal Falls, or carries on business in Marquette, he has got to pay the tax in as many places as he carries on the business. If a wholesaler in Menominee carries on the business in Crystal Falls or business in Marquette he has got to pay the wholesaler's tax in each place. So if a retailer in spirituous and intoxicating liquors carries on a business in the village

12 of Crystal Falls and at another place—in Iron River—he is obliged to pay a tax for Iron River also.

In this case all are treated alike; all are required to pay the same tax. There is no distinction whatever. The manufacturer of malt and brewed liquors is only required to pay $65; and, as I said to the last jury, the plain inference from that statute is that it gives the brewer the right to sell that beer which he has manufactured without any further tax upon it. Of that there can be no question.

Now, the facts are agreed upon in this case and are to the effect that two persons by the name of Hagemeister are citizens of the United States and reside at Green Bay, Wisconsin, engaged in the manufacture of lager beer under the name of Hagemeister & Son, and have a brewery there for manufacturing of beer; that beer is within the statute provided for within this State. They own a warehouse in the village of Iron River, in this county. They there store quantities of their lager beer so made by them and shipped from Green Bay to their warehouse at Iron River, and there stored and disposed of. Henry Lyng, the defendant, is their agent. He

carries on business for them. So far as it appears, Hagemeister & Son do not appear in this State at all. Lyng represents them. Lyng's acts are their acts. Lyng's sales of liquor are their sales of liquor. It is agreed that this liquor was stored there. This beer is sold and disposed of by Lyng to parties at wholesale, as they may want, in quantities exceeding three gallons; and it is further agreed that on the 19th day of July last this defendant sold for Hagemeister & Son liquor, or this malt and brewed liquor, in quantities such as to make him a wholesaler under the laws of this State—
that is, in quantities exceeding three gallons. It was all de-
13 livered in the original packages as they came from Green
Bay, and they had not paid any tax required by the law of this State.

Now, the defense sets up that this law under which this prosecution is brought, which it is claimed requires him to pay a license—that it is unconstitutional, and that it is in conflict with that clause of the Constitution which confers the regulationof State commerce and commerce between the States upon Congress. Various authorities are cited by counsel sustaining this view. Those, as I read them, are all cases where there was a distinction made in the statute between the State where the law was passed and the other States where the goods were manufactured to be brought into this State and sold. That is clearly an interference with the Constitution of the United States, beyond all question. In the case cited, of Welton *vs.* Missouri, the statute of that State, which was then in question, regarding the payment of a license from those persons who dealt in the sale of goods, wares, and merchandise which were not the growth and products or manufacture of the State of Missouri, while no tax was required and no license was required or imposed upon those persons in the State who were engaged in selling goods, wares, and merchandise which were produced within the State, *and* clearly a direct distinction between the goods, wares, and merchandise that were produced in the State and those that came from other States. Of that there can be no question. In the case of Walling *vs.* The State of Michigan, which counsel have cited—that was a case which arose under the liquor law of 1875, which provided that no person should come into this State from another State and traveling through it to sell intoxicating liquors or take orders for the sale of intoxicating
liquors from other States without paying a tax of $100, and such
14 tax was required for sales in the same State or another State of
citizens who were carrying on business within this State. That was the point involved there. And the Supreme Court of the United States, in deciding that case, say that they have repeatedly held that "so long as Congress does not pass any laws to regulate commerce among the several States, it thereby indicates its will that such commerce shall be free and untrammeled, and any regulation of the subjects by the States, except in matters of local concern only, is repugnant to such freedom."

Of course, in matters of local concern, all matters of taxation by the State or the local authorities, where every man is to be treated alike, whether he be a resident of the State or whether he be a non-

resident, then there is no conflict between that law and the Constitution of the United States.

Again, quoting the Massachusetts case: "The result of all the decisions is that the several States have no authority to prescribe different regulations in relation to commerce in certain articles," etc. So there are many other things in the same decision.

Coming down to this case, the court say: "Of course, the act of 1875 (that is, the statute I have told you about, where a man who was selling or traveling through Michigan and taking orders for liquor to be brought from other States was to pay a tax of $100) does not assume to tax non-resident persons or firms for doing business in another State. They are subject to taxation in the States where they are located. It is the business of selling for such non-resident parties or soliciting orders for them for sale in Michigan of liquors imported into the State that is the object of taxation under the law, and any person engaged in these employments or either of them is subject to the tax of $300 per annum. Now, is such tax or any tax imposed upon those who are engaged in the like em-
15 ployment for persons or firms located in Michigan selling or soliciting orders for the sale of liquors manufactured in that State? Clearly not. The tax imposed by the act of 1881 is a tax upon the manufacturer or dealer. That case was cited to show, by the law of 1881, a greater tax was imposed upon the liquor dealer in Michigan than upon these men who paid $100, which he is taxed in the city, township, or village in which his place of business is situated. He is subject to a single tax of $500 per annum; no tax is imposed upon his clerks or agents or his drummers who sell or solicit orders for him; they are merely his servants and are not included in the law. It is he, and not they, whose business is manufacturing or selling liquors, and he is subject to taxation under the law," etc. So they place it upon that ground in this case. If in this case it was simply a question of manufacturing there would be no doubt but what this law would be unconstitutional and void; but we are met by another question, and that is this, and it is really the question in this case: Would a citizen of Michigan, not a manufacturer, if he bought goods from outside the State and sent them to a warehouse in the original packages, as did this man, and sold them in the original package, as this man did, be a wholesaler in the meaning of the statutes of this State? Clearly, gentlemen, he would. I do not see how a man claiming to be a manufacturer outside of the State can ship his goods into this State, place a man in charge of them in a warehouse, and sell them out, as anybody wants them, at wholesale, and claim that he is not a wholesaler within the meaning of this statute. He is not a manufacturer of this State. If he is a manufacturer at all he is a manufacturer outside of this State, which places all men not manufacturing but selling liquors in this State in certain quantities on the same basis and
16 makes them wholesale dealers; but I don't think a man can escape the position of being a wholesale dealer by saying that he manufactures outside of the State and send it here in this State,

put in a building or warehouse, and sell it in quantities to meet the demands of his purchasers.

So, gentlemen, it being conceded, I suppose, by counsel in this case that your verdict must be whatever I understand the law to be, so there is but one verdict for you to render in this case, and that will be a verdict of guilty.

And to the said instruction and charge of the said circuit judge the counsel for the defendant did then and there duly except.

And the said issue, under the instructions aforesaid, was submitted to the jury aforesaid.

And the said jury found a verdict of guilty.

And because none of the exceptions so offered and made to the opinion and decision of the said circuit judge do appear upon the record of the said trial, therefore on the prayer of the said defendant, by his said counsel, the said circuit judge hath signed this bill of exceptions, according to the statute in such case made and provided, this 14th day of November, A. D. 1888.

C. B. GRANT,
*Circuit Judge.*

I hereby consent to the settlement of the foregoing as the bill of exceptions in this cause.

C. T. CRANDALL,
*Prosecuting Attorney of Iron County.*

Dated December 11, 1888.

17 STATE OF MICHIGAN:

The Circuit Court for the County of Iron.

THE PEOPLE OF THE STATE OF MICHIGAN
*vs.*
HENRY LYNG.

COUNTY OF IRON, *ss:*

I, Patrick E. Dunn, clerk of the county and court aforesaid, do hereby certify that the above and foregoing is a true and compared copy of the original record and proceedings in this cause and the whole of said cause remaining of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court this 13th day of December, A. D. 1888.

[OFFICIAL SEAL.] PATRICK E. DUNN, *Clerk.*

(Endorsed:) Filed Dec. 29, 1888. Chas. C. Hopkins, clerk supreme court.

18 At a session of the supreme court of the State of Michigan, held at the supreme court-room, in the city of Lansing, on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Honorable Thomas R. Sherwood, chief justice;

John W. Champlin, Allen B. Morse, James V. Campbell, Charles D. Long, associate justices.

THE PEOPLE, Plaintiff,
*vs.*
HENRY LYNG, Defendant.

This cause is argued by the attorney general and Mr. Crandall for the people and by Mr. Thompson for defendant and submitted.

19 *Opinion.*

THE PEOPLE
*v.*
HENRY LYNG.

Filed April 19, 1889.

Intoxicating liquors—Constitutional law.

1. Pub. Acts Mich. 1887, No. 313, imposes taxes on persons manufacturing or selling at wholesale or retail spirituous liquors in the State. It provides that no person paying a manufacturer's tax shall pay a wholesale dealer's tax. A punishment is also provided for carrying on the business without paying the tax, and the criminal provision is extended to clerks, agents, etc. A wholesale dealer is defined to be one who sells in quantities of more than three gallons or more than a dozen quart bottles. Held that the act makes no discrimination between the citizens of the State and those of other States or between the local and foreign products, and an agent of a foreign manufacturer is criminally liable for selling within the State imported liquors, in the original packages, in quantities of more than three gallons, without paying the wholesale dealer's tax.
2. The act is not, as affecting a foreign manufacturer selling at wholesale within the State, repugnant to Const. U. S. art. 1, § 8, granting to Congress the power to regulate interstate commerce.

Error to circuit court, Iron county; C. B. Grant, judge.

Phillips & Thompson, for defendant; C. T. Crandall, pros. att'y, for the people.

LONG, *J.:* Respondent was prosecuted and convicted under an information which alleges substantially that on July 19, 1888, at the village of Iron River, in the county of Iron, in this State, the respondent, whose business consisted in part of selling, at wholesale, brewed and malt liquors (not proprietary patent medicine) as agent for Franz Hagemeister and Henry Hagemeister, copartners doing business in the city of Green Bay, Wis., under the firm name of Hagemeister & Son, without he or they having paid in full or in part the tax required by law to be paid upon the business, neither he nor they being druggists selling liquors for chemical, medicinal, or sacramental purposes only, and in strict compliance

with law. Respondent brings the case to this court by writ of error on exceptions before sentence. The conceded facts are that Franz and Henry Hagemeister are citizens of the United States of America and reside at the city of Green Bay, in the State of Wisconsin, and are engaged in the manufacture of lager beer, under the name of Hagemeister & Son, at Green Bay aforesaid, where they have a brewery for the manufacture thereof; that such lager beer is brewed liquor, within the meaning of act No. 313 of the Laws of Michigan for 1887; that said Hagemeister & Son own a warehouse in the village of Iron River, in the township of Iron, in the county of Iron and State of Michigan, where they store quantities of their lager beer so made by them at Green Bay aforesaid, and from there shipped to their said warehouse in said village of Iron River, to be there stored and disposed of; that the defendant, Henry Lyng, is employed by said Hagemeister & Son as their agent, on a regular salary, to look after their said warehouse, to take orders for and deliver said beer so manufactured and stored in quantities exceeding three gallons, and to collect and remit the proceeds of the sales thereof to Hagemeister & Son, and was so employed on the 19th day of July, 1888; that on July 19, 1888, at the village of Iron River, in the county of Iron and State of Michigan, said defendant, in the course of said employment by Hagemeister & Son, did deliver from said warehouse to Martin Lally and to divers other persons, all of whom paid him therefor, certain of said lager beer so made and shipped by Hagemeister & Son from Green Bay aforesaid, in quantities exceeding three gallons. All of said lager beer was so delivered in the original packages in which it had been shipped. The defendant sold no other liquors; that neither the said defendant nor the said Hagemeister & Son, or either of them, have paid any tax in the village of Iron River aforesaid on the business of selling or keeping for sale malt liquors at wholesale or at wholesale and retail, nor given any bond such as is mentioned in act No. 313 of the Public Acts of Michigan for 1887. Upon this state of facts the counsel for respondent asked the court to instruct the jury to find a verdict of not guilty. This the trial court refused, but directed them to return a verdict of guilty. Act No. 313, under which this action is brought, is entitled

"An act to provide for the taxation and regulation of the
20 business of manufacturing, selling, keeping for sale, furnishing, giving, or delivering spirituous and intoxicating liquors and malt, brewed, or fermented liquors, and vinous liquors in this State." Section 1 of the act provides that persons engaged in the different branches of the business shall pay annually a certain specified tax. A retailer of spirituous and intoxicating liquors or mixed liquors is to pay the sum of $500. A person engaged in the business of selling or offering for sale spirituous and intoxicating liquors at wholesale and retail is to pay the sum of $800. A wholesaler of brewed or malt liquors only is to pay the sum of $300, and upon the business of manufacturing brewed or malt liquors for sale the sum of $65. "No person paying a tax on spirituous or intoxicating liquors under this act shall be liable to pay any tax on the sale of

malt, brewed, or fermented liquors. No person paying a manufacturer's tax on brewed or malt liquors under this act shall be liable to pay a wholesale dealer's tax on the same." This section also provides that a person shall pay this tax in as many different places as he carries on business. Section 3 provides that wholesale dealers shall be held and deemed to mean and include all persons who sell or offer for sale such liquors and beverages in quantities of more than three gallons or more than one dozen quart bottles, at any one time, to any person or persons. Section 7 of the act provides for the punishment of any person engaged in any business requiring the payment of a tax under section 1 without paying such tax, and gives the circuit court jurisdiction in such cases. Section 24 of the act extends the criminal provisions of this statute to clerks, agents, etc.

It is the contention of defendant's counsel that if the defendant is criminally liable at all it can only be because his principals, Hagemeister & Son, are liable to the payment of a wholesale dealer's tax by section 1 of the act; that Hagemeister & Son are not liable for the payment of this tax because they are not wholesale dealers, but are importers; that articles imported retain their distinctive character at least as long as they remain in the original unbroken packages in which they are introduced and in the hands of the importer; that while the distinction between an importer and a wholesale dealer is not in terms drawn in this statute, it may be presumed that it was enacted in the light of article 1, § 8, of the Constitution of the United States, granting to Congress the power to regulate commerce with foreign nations and among the several States, etc.; that intoxicating liquors are universally recognized as articles of commerce, and a State law imposing a tax which, in effect, discriminates between the products or manufactures of a State where it is enacted and those not of that State is a regulation of commerce between the States, and as such is void because repugnant to the Constitution of the United States; that if this statute is to be construed as imposing a wholesale dealer's tax upon one who is an importer it is a discrimination between beer manufactured in this State and that not so manufactured, for the importer or manufacturer of beer outside this State must pay the annual tax of $300 in every township, city, and village in this State where he desires to sell, while a manufacturer of beer within this State only pays one tax of $65 per annum, and may sell his product anywhere in the State at wholesale. No such discrimination exists between citizens of this and another State under this statute, as claimed by counsel for defendant, or between the products of this and other States. The statute treats all persons without discrimination, whether residents or non-residents, and is in perfect accord with the provisions of the Constitution of the United States. It is not a question of the right of the defendant to manufacture in this State, it is a question of the right of the State to impose upon him a tax for selling at wholesale. If the beer was manufactured in this State and paid a manufacturer's tax, then sales at wholesale could be made without the payment of any further tax; but if a citizen of

Michigan or any other State sees fit to manufacture his product outside of the State and brings the same into the State as a manufactured product and sells or keeps for sale at wholesale, within the meaning of this statute, the tax is demandable, and if the business is carried on in violation of the law the penalty is to be imposed which the statute prescribed. It can make no difference that it is sold in the original packages. When one sells beer or keeps it for sale in quantities beyond three gallons or one dozen quart bottles to any person at any time he is a wholesale dealer, within the meaning of the statute, wherever such beer is manufactured within or without the State, whether sold in original packages or broken packages. If manufactured within the State, whether by a resident or non-resident, a corporation or an individual, it pays a manufacturer's tax, and sales can be made at wholesale without payment of further tax. If the product does not pay a manufacturer's tax, whether manufactured by a resident or non-resident of the State, and sales are made at wholesale, or it is kept for sale at wholesale, within the meaning of the statute, then a wholesaler's tax must be paid.

This case, in principle, does not fall within the cases cited by counsel for defendant. It has been the policy of this State, since the repeal of the prohibitory statutes in 1875, to tax the traffic in intoxicating liquors, and it is held that this system of taxation is not a license. Mr. Justice Cooley, in Youngblood *v.* Sexton, 32 Mich., 419, said: "Does, then, a tax upon the traffic in liquors come within the condemnation of this provision of the Constitution as being equivalent to a license of the traffic? Is it the same in legal effect, or is it the same according to the popular understanding of the term 'license?' * * * The popular understanding of the
21 word 'license' undoubtedly is a permission to do something which without the license would not be allowable. * * * Within this definition, a mere tax upon the traffic cannot be a license of the traffic, unless the tax confers some right to carry on the traffic which otherwise would not have existed. We do not understand that such is the case here. The very act which imposed this tax repealed the previous law, which forbade the traffic, and declared it illegal. The trade, then, became lawful, whether taxed or not. * * * There is consequently nothing in the case that appears to be in the nature of a license." The Legislature have from time to time increased this tax and have thrown around this traffic greater safeguards and restrictions, prohibiting sales to certain specified classes of persons, as minors, intoxicated persons, etc., and also prohibiting sales on certain days of the week and at certain hours of the day. These various acts of the Legislature have been upheld by the courts as within the police power of the State, which the Legislature might lawfully exercise within its discretion, so far as it kept within constitutional bounds. The liquor traffic has become to be regarded by the courts and Legislatures as a business which must be kept under the most strict police regulation of the State. States have a right to prohibit the sale and consumption of an article of commerce which they believe to be pernicious in its effects and the cause of disease, pauperism, and crime. In this State, however, since the act

of 1875, the sale of such intoxicating and malt liquors has been regarded as lawful, but subject to such restrictions as the Legislature might from time to time impose. That the Legislature has the power to make such regulations is not now a question of doubt, and the Legislature is the sole judge of the propriety of such enactments. Mr. Justice Harlan, in Mugler *v.* State, 123 U. S., 623, 8 Sup. Ct. Rep., 273, speaking of License Cases, 5 How., 504, says that "the question (in those cases) was whether certain statutes of Massachusetts, Rhode Island, and New Hampshire, relating to the sale of spirituous liquors, were repugnant to the Constitution of the United States. In determining that question it became necessary to inquire whether there was any conflict between the exercise by Congress of its power to regulate commerce with foreign countries or among the several States and the exercise by a State of what are called 'police powers.' Although the members of the court did not fully agree as to the grounds upon which the decision should be placed, they were unanimous in holding that the statutes then under examination were not inconsistent with the Constitution of the United States or with any act of Congress. Chief Justice Taney said: 'If any State deems the retail and internal traffic in ardent spirits injurious to its citizens and calculated to produce idleness, vice, or debauchery, I see nothing in the Constitution of the United States to prevent it from regulating and restraining the traffic or from prohibiting it altogether, if it thinks proper.' Mr. Justice McLean, among other things, said: 'A State regulates its domestic commerce contracts, the transmission of estates, real and personal, and acts upon internal matters which relate to its moral and political welfare. Over these subjects the Federal government has no power. * * * The acknowledged police power of a State extends often to the destruction of property.' * * * Mr. Justice Woodbury observed: 'How can they (the States) be sovereign within their respective spheres without power to regulate all their internal commerce, as well as police, and direct how, when, and where it shall be conducted, in articles intimately connected either with public morals, public safety, or public prosperity?' Mr. Justice Grier, in still more emphatic language, said: 'The true question presented by these cases, and one which I am not disposed to evade, is whether the States have a right to prohibit the sale and consumption of an article of commerce which they believe to be pernicious in its effects and the cause of disease, pauperism, and crime. * * * Without attempting to define what are the peculiar subjects or limits of this power, it may safely be affirmed that every law for the restraint or punishment of crime for the preservation of the public peace, health, and morals must come within this category. * * * It is not necessary for the sake of justifying the State legislation now under consideration to array the appalling statistics of misery, pauperism, and crime which have their origin in the use or abuse of ardent spirits. The police power, which is exclusive in the States, is alone competent to the correction of these great evils, and all measures of restraint or prohibition necessary to effect the purpose are within the scope of that authority.'" These statutes under consideration in the above cases were enacted for the

purpose of mitigating, and to some extent suppressing, the evils of intemperance. The statute of Massachusetts prohibited the traffic in intoxicating liquors by all persons except those holding a license from the county commissioner, and licensed vendors were forbidden to sell in quantities less than 28 gallons in any single sale. Under its provision no person was entitled, as matter of right, to receive a license, but the question whether any license should be granted in the county was left entirely to the discretion of the commissioners. A person who did not hold a license engaged in the business of selling foreign liquors, imported into the United States under the statutes thereof. He was indicted and convicted in the State courts of a violation of the statute of the State. The other cases were under similar statutes of the States of New Hampshire and Rhode Island, and involved similar states of fact. The causes being removed to the Supreme Court, the judgments were affirmed. The claim
22 made in those cases was that, the liquors being transported into the State under the authority of the Federal Constitution and statutes, it was not competent for the State to prohibit their sale or regulate the manner in which it should be conducted; but the court held that the statutes were not in conflict with the commercial provisions of the Federal Constitution. As was said by Reed, C. J., in Collins *v.* Hills, in a late case in Iowa (41 N. W. Rep., 571), "When the power of the State to legislate with reference to the subject-matter is conceded, it follows necessarily, we think, that all property within the State is subject to the regulations it has enacted."

When property purchased in another State is transported to this, and then delivered to the purchaser, to be used or consumed within the State, the transaction, in so far as it is governed by the provisions for the regulation of commerce among the States, is at an end, or, in the language of Mr. Justice Woodbury, in the License Cases above cited, "These license laws do not profess to be, nor do they operate as, regulations of foreign commerce, nor the domestic commerce between the States. It does not operate on either, or the imports of either, till they have entered the State and become component parts of its property. Then it has, by the Constitution, the exclusive power to regulate its own internal commerce and business in such articles, and bind all residents—citizens or not—by its regulations, if they ask its protection and privileges; and Congress, instead of being opposed and thwarted by regulations as to this, can no more interfere in it than the States can interfere in regulation of foreign commerce. If the proposition was maintainable that, without any legislation by Congress as to the trade between the States, anything imported from another State, foreign or domestic, could be sold of right in the package in which it was imported, not subject to any license or internal regulation of a State, then it is obvious that the whole license system may be evaded and nullified, either from abroad or from a neighboring State, and the more especially can it be done from the latter, as imports may be made in bottles of any size, down to half a pint of spirits or wines; and, if its sale cannot be interfered with and regulated, the retail business can be carried

on in any small quantity, and by the most irresponsible and unsuitable persons, with perfect impunity."

Certainly, if the State may grant or refuse licenses for the sale of this article when imported into the State at its pleasure, then may a State regulate the same by taxation. When stored in this State it is conceded to be for the purpose of sale at wholesale. It then becomes a component part of the property of the State; and in so far as it may have been governed by the provisions of the Federal Constitution for the regulation of commerce between the States, such rights are at an end, and it must be treated as property within the State for all purposes of taxation, and it at once becomes subject to the laws which the State has enacted governing its use or disposition, whether sales are made or to be made in the original packages or not. If the principle for which counsel for defendant contends could be maintained it would follow that manufacturers outside the State could bring this article within the State and escape all taxation, either as a manufacturer or wholesale dealer, so long as the article was sold in the original packages. It is claimed that Hagemeister & Son are not chargeable with the manufacturer's tax because not manufacturing within the State, and that the defendant cannot be convicted, for the reason that Hagemeister & Son are not liable to the payment of a wholesale dealer's tax under this act, for they are importers and not wholesale dealers. It does not matter where these articles are manufactured or by whom. The person who sells or offers them for sale in quantities of more than three gallons or more than one dozen quart bottles at any one time to any person or persons is held to be a wholesale dealer and liable for such wholesale dealer's tax, unless a manufacturer's tax has been paid. The defendant is not a manufacturer. The statute places all men not manufacturing but selling liquors in this State in certain quantities on the same basis and makes them wholesale dealers. Counsel for defendant cites Bowman *v.* Railway Co., 125 U. S., 465, 8 Sup. Ct. Rep., 689, 1062. In that case the sole question involved was as to the validity of certain provisions of the statute which forbade common carriers from transporting to any point within the State of Iowa intoxicating liquors, unless they had been furnished with written evidence of the right of the consigner to sell the same within the State. The right to tax this commodity when once within the State was not in controversy in that case. Walling *v.* Michigan, 116 U. S., 446; 6 Sup. Ct. Rep., 454, was a case which arose under the Michigan statute of 1875, which required persons selling liquors or taking orders therefor in this State for liquors to be shipped from without the State to pay a tax of $100, while no such tax was required of persons selling liquors or taking orders for the sale of the same which were the product of this State. This was held to be a discrimination between the product of this and the other States, the court saying: "So long as Congress does not pass any law to regulate commerce among the several States, it thereby indicates its will that such commerce shall be free and untrammeled, and that any regulation of the subject by the States, except in matters of local concern only, is repugnant to such freedom;" but no such question

is involved here. The property in question is within the jurisdiction of the State, is offered for sale, and has paid no tax. The State claims the right to regulate it by taxation, and this it may lawfully do under the police power. It is a tax local in its nature, and imposed for the purpose of restraint of the sale of a dangerous
23 commodity. Under the conceded facts in the case the conviction was warranted and the verdict must stand. The court below will proceed to judgment upon the verdict.

Sherwood, C. J., and Campbell, J., concurred; Champlin and Morse, JJ., concurred in the result.

24 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the city of Lansing, on the nineteenth day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Honorable Thomas R. Sherwood, chief justice; John W. Champlin, Allen B. Morse, James V. Campbell, Charles D. Long, associate justices.

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,
*vs.*
HENRY LYNG, Defendant.

This cause having been brought to this court upon exceptions from the circuit court for the county of Menominee, and the same and the matters therein having been seen and duly considered by the court, thereupon it is ordered that it be certified to said circuit court for the county of Menominee that there is no error in the rulings and proceedings therein, and the said circuit court is advised to render judgment upon the verdict.

| 25 Parties. | Plaintiff's attorneys. | Defendant's attorneys. |
|---|---|---|
| The People of the State of Michigan, plaintiff, *vs.* Henry Lyng, defendant. | Attorney General C. T. Crandall, pros. att'y. Exceptions from Iron. | Phillips & Thompson. |

| Costs. | Journal. | Date. | Proceedings. |
|---|---|---|---|
| | | 1888. | |
| | | Dec. 29 | Record on exceptions filed. |
| | | " " | Note of argument filed. |
| | | 1889. | |
| | 1—317--- | Jan. 29 | Argued and submitted. |
| | "—420--- | April 19 | Affirmed. |
| | | " 23 | Order mailed to prosecuting attorney. |

[Endorsed:] No. —. State of Michigan. The —— court for the —— of ——, in chancery. —— ——, complainant, *vs.* —— ——, defendant. Certified copy of calendar entries in supreme court. Filed ——, 188–. —— ——, clerk. —— ——, attorney for ——.

26 The foregoing is a correct copy of the record and of all proceedings had and entered in the above-entitled cause of The People of the State of Michigan *vs.* Henry Lyng, first brought to this court upon exceptions before sentence, including a copy of the opinion of the court filed therein.

Subsequently judgment was entered on the verdict in the court below and the cause again brought to this court on writ of error. A copy of the record and of all proceedings had and entered upon the second hearing in this court is hereto annexed. No written opinion was filed upon the second hearing, the court simply adhering to its former ruling and directing a judgment of affirmance to be entered.

27 STATE OF MICHIGAN:

In the Supreme Court.

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff & Appellee,
*vs.*
HENRY LYNG, Respondent & Appellant.

Charles C. Hopkins, clerk supreme court.

SIR: Please issue a writ of error in the above-entitled cause in favor of the respondent, directed to the judge of the circuit court for the county of Iron and returnable in 20 days—action of violation of liquor law.

Enclosed find entry fee of two dollars.

Yours, etc., PHILLIPS & THOMPSON,
*Attorneys for Respondent and Appellant.*

Dated May 10, 1889.

28 STATE OF MICHIGAN:

In the Supreme Court.

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff & Appellee,
*vs.*
HENRY LYNG, Defendant & Appellant.

SIR: Please take notice that the defendant in the above-entitled cause has caused a writ of error to be issued out of and under the seal of the supreme court of the State of Michigan, directed to the judge of the circuit court for the county of Iron. Said writ of error is dated May 13th, 1889, and is returnable at that supreme court room, in the city of Lansing, on the third day of June, 1889.

Yours, etc., PHILLIPS & THOMPSON,
*Attorneys for Appellant.*

Dated May 15, 1889.

To C. T. Crandall, pros. attorney for Iron Co., and Stephen V. R. Trowbridge, att'y gen'l for Michigan.

STATE OF MICHIGAN, *County of Menominee,* } *ss:*

W. H. Phillips, being duly sworn, deposes and says that on the 15th day of May, 1889, he served a notice, of which the within is a true copy, upon Stephen V. R. Trowbridge, attorney general of said State, and C. T. Crandall, prosecuting attorney for Iron county, Mich., they being the attorneys for the people in the within-entitled cause, by depositing the said copy in the post office in the city of Menominee, Michigan, with full postage paid thereon, and directed as follows: One to Stephen V. R. Trowbridge, Ionia, Mich., and one to C. T. Crandall, Crystal Falls, Mich., the said Ionia and Crystal Falls being the place of residence of the said Trowbridge and Crandall respectively, they not having an agent known to deponent on whom to serve papers at Lansing, Mich.

W. H. PHILLIPS.

Subscribed and sworn to before me this 15th day of May, 1889.

J. E. HICKS,
*Notary Public, Menominee Co., Mich.*

29 STATE OF MICHIGAN, *County of Iron,* } *ss:*

The complaint of Manville B. Wait, of Iron River village, taken and made before me, Wm. J. Brown, a justice of the peace of Iron River township, in said county, the 19th day of July, A. D. 1888, who, being duly sworn, says that heretofore, to wit, on the 19th day of July, A. D. 1888, at the township of Iron River and in the county aforesaid, Henry Lyng, then and there being, was a person whose business consisted in keeping and offering for sale brewed and malt liquors at wholesale, as agent for Hagemeister & Son, of Green Bay, Wis., without neither he nor they having paid the tax required by

law upon the business of selling and offering for sale said liquors, he not being a druggist selling liquor for chemical, scientific, mechanical, or sacramental purposes only and in strict compliance with the law, according to the form of statute in such case made and provided.

Wherefore the said Manville B. Wait prays that the said Henry Lyng may be apprehended and held to answer complaint and further dealt with in relation to the same as law and justice may require.

MANVILLE B. WAIT.

30 Taken, subscribed, and sworn before me the day and year first above written.

WM. J. BROWN,
*Justice of the Peace.*

*Warrant.*

STATE OF MICHIGAN, } ss:
*County of Iron,* }

To the sheriff or any constable of said county, Greeting:

Whereas Manville B. Wait hath this day made complaint to me, Wm. J. Brown, a justice of the peace of the township of Iron River, in said county, that heretofore, to wit, on the 19th day of July, A. D. 1888, at the village of Iron River, in the county aforesaid, Henry Lyng, then and there being, was a person whose business consisted in keeping for sale brewed and malt liquors at wholesale, as agent for Hagemeister & Son, of Green Bay, Wisconsin, without either he or they having paid the tax required by law upon the business of selling and offering for sale said liquors, he not being a druggist selling liquors for chemical, scientific, medicinal, mechanical, or sacramental purposes only and in strict compliance with law, contrary to the statute in such case made and provided;

And whereas, on examination on oath of the said Manville B. Wait by me, the said justice, it appeared to me, the said justice of the peace, that said offense had been committed, and there is just cause to suspect the said Henry Lyng to have been guilty thereof: Therefore, in the name of the people of the State of Michigan, you and each of you are hereby commanded forthwith to take the said Henry Lyng and bring him before me, the said justice of the peace, to be dealt with according to law.

Given under my hand and seal, at the township of Iron River, in said county, on the 19th day of July, A. D. 1888.

WILLIAM J. BROWN, [L. S.]
*Justice of the Peace.*

31 *Bond.*

STATE OF MICHIGAN, } ss:
*County of Iron,* }

Be it remembered that on the 26th day of July, A. D. 1888, Henry Lyng, of Iron River, in said county, and Charles Lorenz and Frank

Comins, in said county, personally came before me, Wm. J. Brown, a justice of the peace in and for the said county of Iron, and severally and respect*fully* acknowledged themselves to be indebted to the people of the State of Michigan in the sum of four hundred dollars each, to be levied of their respective goods and chattels, lands and tenements, to the use of the said people, if the said Henry Lyng shall make default in the condition following:

Whereas the said Henry Lyng was charged before me, the above-named justice, upon the oath of Manville B. Wait, for that on the 19th day of July, 1888, at Iron River village and in the county aforesaid, Henry Lyng, then and there being, was a person whose business consisted in keeping and offering for sale brewed and malt liquors at wholesale, without having paid the tax required by law upon the business of selling and offering for sale said liquors, he not being a druggist selling liquors for chemical, scientific, medicinal, mechanical, or sacramental purposes only, and in strict compliance with the law, contrary to the statute in such case made and provided;

And whereas the said Henry Lyng waived examination in justice court — desired to go to circuit court for the county of Iron without said examination in justice court: Therefore the condition of this recognizance is such that if the said Henry Lyng shall be and appear personally at the next term of the circuit court, to be held in and for the county of Iron on the — day of ——, A. D. 1888,
32 at Crystal Falls, in said county, then and there to answer to an information to be filed against him for the offense above mentioned, and to do and receive what shall by the court be then and there enjoined upon him, and shall not depart the court without leave, then this recognizance to be void; otherwise to remain in full force and virtue.

HENRY LYNG. [SEAL.]
CHAS. LORENZ. [SEAL.]
FRANK COMINS. [SEAL.]

Taken, subscribed, and acknowledged before me the day and year first above written.

WM. J. BROWN,
*Justice of the Peace.*

I hereby certify that the sureties to the above recognizance justified their pecuniary responsibility as such on oath before me—

WM. J. BROWN,
*Justice of the Peace.*

*Copy of Justice's Docket Entries.*

STATE OF MICHIGAN, } ss:
*County of Iron,* }

THE PEOPLE } ss:
*vs.*
HENRY LYNG. }

In justice court, before Wm. J. Brown, one of the justices of the peace in and for said county.

July 19th, 1888.—On complaint of M. B. Wait, marshal of the village of Iron River, a warrant was issued for the arrest of said Henry Lyng.

July 19th, 1888.—The accused was brought into court. The warrant being read to him, he plead not guilty, and waived examination in justice court and went to circuit court.

33 Prisoner was ordered by me to furnish a bond for his appearance at circuit court for the county of Iron at its next session, with two sureties, each in the sum of four hundred dollars.

*Justice's Return.*

STATE OF MICHIGAN, } *ss:*
*County of Iron,* }

I, the undersigned, Wm. J. Brown, one of the justices of the peace in and for said county, do hereby certify and return to the circuit court of the county of Iron aforesaid that on the 19th day of July, 1888, one Manville B. Wait, of Iron River village, made complaint to me that Henry Lyng, then and there being, was a person whose business consisted of keeping and offering for sale brewed and malt liquors at wholesale without having paid the tax required by law upon the business of selling and offering for sale said liquors, he not being a druggist selling liquors for chemical, scientific, medicinal, mechanical, or sacramental purposes only, and in strict compliance with the law, contrary to the form of the statute in such case made and provided.

And it appearing to me, the said justice of the peace, that said offense had been committed, I issued a warrant directed to the sheriff or any constable of said county and commanding such sheriff or constable forthwith to arrest the said Henry Lyng and bring him before me to be dealt with according to law; which said warrant was returned on the same day (July 19th) to me by Manville B. Wait, one of the constables of the township of Iron River, in said county, with the body of the said Henry Lyng in his custody. As well *as* the said Henry Lyng as the said Manville B. Wait

34 appeared before me, and the charge made against the said Henry Lyng, as stated in the warrant to arrest, was distinctly read to him, the said Henry Lyng, and he being required by me to plead thereto said that he was not guilty thereof and waived his examination in said justice court.

I, the said justice, thereupon ordered that the said Henry Lyng should furnish a recognizance in the sum of four hundred dollars, with two sureties, for his appearance at the next term of the circuit court of the county of Iron; which recognizance was furnished by said Henry Lyng, with Charles Lorenz and Frank Comins as sureties, and which is herewith returned with all the proceedings had in said case before me.

Given under my hand and seal this 26th day of July, A. D. 1888.

W. J. BROWN, [SEAL.]
*Justice of the Peace.*

*Information.*

STATE OF MICHIGAN, } ss:
*Iron County,* }

The Circuit Court for the County of Iron.

Cyrus T. Crandall, prosecuting attorney in and for the county of Iron aforesaid, for and in behalf of the people of the State of Michigan, comes into said court in the September term thereof, in the year A. D. 1888, and gives it here to understand and be informed that on the 19th day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the village of Iron River, in said Iron county, Henry Lyng, then and there being, was a person whose business consisted in part of selling at wholesale brewed and malt liquors (not proprietary patent medicine), as agent for Franz
35 Hagemeister and Henry Hagemeister, copartners doing business in the city of Green Bay, Wisconsin, under the firm name of Hagemeister & Son, without he or they having paid in full or in part the tax required by law to be paid upon the business, neither he nor they being druggists selling liquors for chemical, medicinal, or sacramental purposes only and in strict compliance with the law—

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the people of the State of Michigan.

CYRUS T. CRANDALL,
*Prosecuting Attorney in and for the County of Iron, Mich.*

STATE OF MICHIGAN, } ss:
*County of Iron,* }

Cyrus T. Crandall, being duly sworn, deposeth and says that he knows the contents of the foregoing information by him subscribed, and verily believes the same to be true as therein set forth.

CYRUS T. CRANDALL.

Sworn to and subscribed before me this 18th day of September, A. D. 1888.

P. E. DUNN,
*Clerk of the Circuit Court, Iron County, Mich.*

Endorsed: "Witnesses: Manville Wait, Martin Lally." "Filed this 18th day of September, A. D. 1888, in the September term. P. E. Dunn, clerk."

*Copy of Journal Entries.*

The Circuit Court for the County of Iron.

At a general term of the circuit court, continued and held, at the opera-house, in the village of Crystal Falls, in said county,
36 on the eighteenth day of September, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The Hon. Claudius B. Grant, circuit judge.

The court opened for business in due form.

THE PEOPLE OF THE STATE OF MICHIGAN
*vs.*
HENRY LYNG.
} Information for Selling Beer without License at Wholesale.

Henry Lyng, the respondent in this cause, having been duly arraigned at the bar in open court, and the information being read to him by Cyrus T. Crandall, prosecuting attorney, pleaded thereto not guilty.

Thereupon came a jury, to wit, John Morrison, John Corbitt, A. J. Harding, John Burt, Olaf Helgemo, William Hunter, Barney McLaughlin, Thomas Gallivan, Herman Raw, John F. Minckler, Charles Olsen, Michael Corcoran, who were duly empaneled, tried, and sworn well and truly to try and true deliverance make between the people of this State and the prisoner at the bar whom they should have in charge, according to the evidence and the laws of this State, and, after having heard the proofs and allegations of the parties, the arguments of counsel, and the charge of the court, re-red from the bar under the charge of John S. McLean, an officer of the court, to consider of their verdict to be given, and after being absent for a time return into the court and say, upon their oath, that they find the said Henry Lyng guilty in manner and form as the said people hath in their information in this cause charged.

And thereupon, on motion of Phillips and Thompson, attorneys for defendant, C. T. Crandall appearing for the people, it is ordered that the defendant have sixty days to move for a new trial and to settle a bill of exceptions, and that judgment upon the verdict be
37 stayed, and that the defendant be admitted to bail in the sum of two hundred dollars.

C. B. GRANT,
*Circuit Judge.*

At a session of the circuit court for the county of Iron, commenced and held at opera-house, in village of Crystal Falls, in said county, on the 7th day of May, A. D. 1889.

Present: Hon. C. B. Grant, circuit judge.

THE PEOPLE
*vs.*
HENRY LYNG.

This cause having been removed to the supreme court of this State upon exceptions before judgment, and the said supreme court having heard and considered the same and having advised this court to render judgment on the verdict: Therefore, on motion of C. T. Crandall, prosecuting attorney, the respondent was brought before the court for sentence, and it appearing that the said respondent, Henry Lyng, was by the verdict of the jury duly convicted of the crime of selling malt, brewed, and fermented liquors at wholesale without having paid the tax required by law, as appears by the record thereof, therefore it — ordered and adjudged by the court

now here that the said Henry Lyng pay a fine of one hundred dollars.

Whereupon, on motion of Phillips & Thompson, it is ordered that all further proceedings be stayed for twenty days in order to settle a bill of exceptions, and that the respondent be admitted to bail in the sum of two hundred dollars.

C. B. GRANT,
*Circuit Judge.*

38 The Circuit Court for the County of Iron.

THE PEOPLE OF THE STATE OF MICHIGAN
*vs.*
HENRY LYNG.

*Bill of Exceptions.*

At a session of said court, held at the court-house, in the village of Crystal Falls, in said county, on the 18th day of September, A. D. 1888, before the Honorable Claudius B. Grant, judge of said court, the issue joined between the parties in this cause came on to be tried by a jury of said county, for that purpose duly empaneled, good and lawful men of said county, on which day there came there as well the said people as the said defendant, by their respective counsel, and upon the trial of said issue the following facts, being all the facts attempted to be established upon said trial by either party, were admitted to be true by both of the said parties, to wit:

1. Franz Hagemeister and Henry Hagemeister are citizens of the United States of America and reside at the city of Green Bay, in the State of Wisconsin, and are engaged in the manufacture of lager beer, under the name of "Hagemeister & Son," at Green Bay aforesaid, where they have a brewery for the manufacture thereof.

2. Such lager beer is brewed liquor within the meaning of act No. 313 of the laws of Michigan for 1887.

39 3. Said Hagemeister & Son own a warehouse in the village of Iron River, in the township of Iron River, in the county of Iron and State of Michigan, where they store quantities of their lager beer so made by them at Green Bay aforesaid, and from there shipped to their said warehouse in said village of Iron River, to be there stored and disposed of.

4. The defendant, Henry Lyng, is employed by said Hagemeister & Son as their agent, on a regular salary, to look after their said warehouse, to take orders for and deliver said beer, so manufactured and stored, in quantities exceeding three gallons, and to collect and remit the proceeds of the sales thereof to said Hagemeister & Son, and was so employed on the 19th day of July, 1888.

5. On the 19th day of July, 1888, at the village of Iron River, in the county of Iron and State of Michigan, said defendant, in the course of his said employment by Hagemeister & Son, did deliver from said warehouse to Martin Lally and to divers other persons, all of whom paid him therefor, certain of said lager beer, so made and shipped by Hagemeister & Son from Green Bay aforesaid, in

quantities exceeding three gallons. All of said lager beer was so delivered in the original packages in which it had been shipped. The defendant sold no other liquors.

6. Neither the said defendant nor the said Hagemeister & Son, or either of them, have paid any tax in the village of Iron River aforesaid on the business of selling or keeping for sale malt liquors at wholesale or at wholesale and retail, nor given any bond such as is mentioned in act No. 313 of the Public Acts of Michigan for 1887.

And thereupon the people rested their case.

And thereupon the defendant rested his case.

40 And thereupon the defendant, by his counsel, requested the court to instruct and charge the jury to find a verdict of not guilty.

But the said circuit judge did then and there decline and refuse to instruct and charge the jury as requested by the counsel for the defendant.

And thereupon the counsel for the said defendant did then and there duly except to the said refusal of the said circuit judge to instruct and charge the jury as requested by the defendant.

And the said circuit judge did then and there instruct and charge said jury as follows:

GENTLEMEN OF THE JURY: The statute of this State, passed by the Legislature of 1887, is entitled "An act for the taxation and regulation of the business of manufacturing, selling, keeping for sale, furnishing, giving, or delivering spirituous and intoxicating liquors and malt, brewed, or fermented liquors;" and this statute goes on to provide the different taxes that each person engaged in the different branches of the business shall pay.

A retailer is to pay $500. A wholesaler of malt and brewed liquors is to pay $300; a wholesaler of spirituous and intoxicating liquors, $800. A manufacturer of malt and brewed liquors is to pay $65.

Such, in brief, are the provisions of this law. This law provides also that a man shall also pay the tax in as many places as he carries on the business. If the wholesaler in Menominee carries on business there or business in Crystal Falls, or carries on business in Marquette, he has got to pay the tax in as many places as he carries on the business. If a wholesaler in Menominee carries on the business in Crystal Falls or business in Marquette he has got to pay the wholesaler's tax in each place. So if a retailer in spirituous and intoxicating liquors carries on a business in the village

41 of Crystal Falls and at another place—in Iron River—he is obliged to pay a tax for Iron River also.

In this case all are treated alike; all are required to pay the same tax. There is no distinction whatever. The manufacturer of malt and brewed liquors is only required to pay $65; and, as I said to the last jury, the plain inference from that statute is that it gives the brewer the right to sell that beer which he has manufactured without any further tax upon it. Of that there can be no question.

Now, the facts are agreed upon in this case and are to the effect that two persons by the name of Hagemeister are citizens of the United States and reside at Green Bay, Wisconsin, engaged in the manufacture of lager beer under the name of Hagemeister & Son, and have a brewery there for manufacturing beer; that beer is within the statute provided for within this State. They own a warehouse in the village of Iron River, in this county. They there store quantities of their lager beer so made by them and shipped from Green Bay to their warehouse at Iron River, and there stored and disposed of. Henry Lyng, the defendant, is their agent. He carries on business for them. So far as it appears, Hagemeister & Son do not appear in this State at all. Lyng represents them. Lyng's acts are their acts. Lyng's sales of liquor are their sales of liquor. It is agreed that this liquor was stored there. This beer is sold and disposed of by Lyng to parties at wholesale, as they may want, in quantities exceeding three gallons; and it is further agreed that on the 19th day of July last this defendant sold for Hagemeister & Son liquor, or this malt and brewed liquor, in quantities such as to make him a wholesaler under the laws of this State—
that is, in quantities exceeding three gallons. It was all de-
42 livered in the original packages as they came from Green
Bay, and they had not paid any tax required by the law of this State.

Now, the defense sets up that this law under which this prosecution is brought, which it is claimed requires him to pay a license—that it is unconstitutional, and that it is in conflict with that clause of the Constitution which confers the regulation of State commerce and commerce between the States upon Congress. Various authorities are cited by counsel sustaining this view. Those, as I read them, are all cases where there was a distinction made in the statute between the State where the law was passed and the other States where the goods were manufactured to be brought into this State and sold. That is clearly an interference with the Constitution of the United States, beyond all question. In the case cited, of Welton *vs.* Missouri, the statute of that State, which was then in question, regarding the payment of a license from those persons who dealt in the sale of goods, wares, and merchandise which were not the growth and products or manufacture of the State of Missouri, while no tax was required and no license was required or imposed upon those persons in the State who were engaged in selling goods, wares, and merchandise which were produced within the State, *and* clearly a direct distinction between the goods, wares, and merchandise that were produced in the State and those that came from other States. Of that there can be no question. In the case of Walling *vs.* The State of Michigan, which counsel have cited—that was a case which arose under the liquor law of 1875, which provided that no person should come into this State from another State and traveling through it to sell intoxicating liquors or take orders for the sale of intoxicating
liquors from other States without paying a tax of $100, and such
43 tax was required for sales in the same State or another State of
citizens who were carrying on business within this State. That

was the point involved there. And the Supreme Court of the United States, in deciding that case, say that they have repeatedly held that "so long as Congress does not pass any laws to regulate commerce among the several States, it thereby indicates its will that such commerce shall be free and untrammeled, and any regulation of the subjects by the States, except in matters of local concern only, is repugnant to such freedom."

Of course, in matters of local concern, all matters of taxation by the State or the local authorities, where every man is to be treated alike, whether he be a resident of the State or whether he be a non-resident, then there is no conflict between that law and the Constitution of the United States.

Again, quoting the Massachusetts case: "The result of all the decisions is that the several States have no authority to prescribe different regulations in relation to commerce in certain articles," etc. So there are many other things in the same decision.

Coming down to this case, the court say: "Of course, the act of 1875 (that is, the statute I have told you about, where a man who was selling or traveling through Michigan and taking orders for liquor to be brought from other States was to pay a tax of $100) does not assume to tax non-resident persons or firms for doing business in another State. They are subject to taxation in the States where they are located. It is the business of selling for such non-resident parties or soliciting orders for them for sale in Michigan of liquors imported into the State that is the object of taxation under the law, and any person engaged in these employments or either of them is subject to the tax of $300 per annum. Now, is such tax or any tax imposed upon those who are engaged in the like em-
44 ployment for persons or firms located in Michigan selling or soliciting orders for the sale of liquors manufactured in that State? Clearly not. The tax imposed by the act of 1881 is a tax upon the manufacturer or dealer. That case was cited to show, by the law of 1881, a greater tax was imposed upon the liquor dealer in Michigan than upon these men who paid $100, which he is taxed in the city, township, or village in which his place of business is situated. He is subject to a single tax of $500 per annum; no tax is imposed upon his clerks or agents or his drummers who sell or solicit orders for him; they are merely his servants and are not included in the law. It is he, and not they, whose business is manufacturing or selling liquors, and he is subject to taxation under the law," etc. So they place it upon that ground in this case. If in this case it was simply a question of manufacturing there would be no doubt but what this law would be unconstitutional and void; but we are met by another question, and that is this, and it is really the question in this case: Would a citizen of Michigan, not a manufacturer, if he bought goods from outside the State and sent them to a warehouse in the original packages, as did this man, and sold them in the original package, as this man did, be a wholesaler in the meaning of the statutes of this State? Clearly, gentlemen, he would. I do not see how a man claiming to be a manufacturer outside of the State can ship his goods into this State, place a man in

charge of them in a warehouse, and sell them out, as anybody wants them, at wholesale, and claim that he is not a wholesaler within the meaning of this statute. He is not a manufacturer of this State. If he is a manufacturer at all he is a manufacturer outside of this State, which places all men not manufacturing but selling liquors in this State in certain quantities on the same basis and
45 makes them wholesale dealers; but I don't think a man can escape the position of being a wholesale dealer by saying that he manufactures outside of the State and send it here in this State, put in a building or warehouse, and sell it in quantities to meet the demands of his purchasers.

So, gentlemen, it being conceded, I suppose, by counsel in this case that your verdict must be whatever I understand the law to be, so there is but one verdict for you to render in this case, and that will be a verdict of guilty.

And to the said instruction and charge of the said circuit judge the counsel for the defendant did then and there duly except.

And the said issue, under the instructions aforesaid, was submitted to the jury aforesaid.

And the said jury found a verdict of guilty.

And because none of the exceptions so offered and made to the opinion and decision of the said circuit judge do appear upon the record of the said trial, therefore on the prayer of the said defendant, by his said counsel, the said circuit judge hath signed this bill of exceptions, according to the statute in such case made and provided, this eighth day of May, A. D. 1889.

C. B. GRANT,
*Circuit Judge.*

46 STATE OF MICHIGAN:

The Circuit Court for the County of Iron.

THE PEOPLE OF THE STATE OF MICHIGAN
*vs.*
HENRY LYNG.

COUNTY OF IRON, *ss:*

I, Patrick E. Dunn, clerk of the county and court aforesaid, do hereby certify that the above and foregoing is a true and compared copy of the original record and proceedings in this cause and the whole of said cause remaining of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court this eighth day of May, A. D. 1889.

[OFFICIAL SEAL.] PATRICK E. DUNN, *Clerk.*

47 STATE OF MICHIGAN:

Supreme Court.

THE PEOPLE OF THE STATE OF MICHIGAN
*vs.*
HENRY LYNG, Defendant & Appellant.

*Error to Iron Circuit.*

And now comes the above-named defendant and appellant, by Phillips & Thompson, his attorneys, and says that in the record, trial, and proceedings in said cause in the court below there is manifest error in this, viz:

First. The court erred in refusing to instruct and charge the jury upon the trial of said cause to find a verdict of not guilty, as requested by counsel for defendant.

Second. The court erred in instructing and charging the jury upon the trial of said cause in substance that act No. 313 of Public Acts of Michigan, passed at the session of 1887, under which this prosecution was brought, does not operate as a regulation of commerce among the States and is not in conflict with the Constitution of the United States.

Therefore and for the errors aforesaid the said appellant prays this honorable court that the judgment rendered in said cause in the court below may be set aside, reversed, and altogether held for naught, and that he may be restored to all things that he has lost by reason thereof.

PHILLIPS & THOMPSON,
*Attorneys for Defendant and Appellant.*

STATE OF MICHIGAN, *County of Menominee,* } *ss:*

William H. Phillips, of said county, being duly sworn, says that on the 18th day of May, A. D. 1889, he served a copy of the annexed assignment of errors upon S. V. R. Trowbridge, attorney general of the State of Michigan, and a like copy upon C. T. Crandall, prosecuting attorney of Iron county, in said State, by mail.

48 That such service was made by depositing such copies in the post office at Menominee, Michigan, enclosed in securely sealed wrappers, and addressed respectively to Hon. S. V. R. Trowbridge, attorney general, Ionia, Mich., and C. T. Crandall, Esq., prosecuting attorney of Iron county, Crystal Falls, Mich., and the postage was fully prepaid upon each such package before mailing, and that the place of residence of said attorney general is Ionia, Michigan, and that of the said prosecuting attorney is Crystal Falls, Michigan.

WM. H. PHILLIPS.

Subscribed and sworn to before me this 18th day of May, A. D. 1889.

G. A. REM,
*Notary Public.*

49 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the city of Lansing, on the fifth day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Honorable Thomas R. Sherwood, chief justice; John W. Champlin, Allen B. Morse, James V. Campbell, Charles D. Long, associate justices.

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,
*vs.*
HENRY LYNG, Defendant and Appellant.

The record and proceedings in this cause having been removed to this court by exceptions before judgment from the circuit court for the county of Iron, and the same having been seen, inspected, and duly considered by the court, and the circuit court having been directed by this court to proceed to judgment herein, and judgment having been rendered by said circuit court for the county of Iron upon the verdict, and the record and proceedings in this cause having been again removed to this court by a writ of error issued to the circuit court for the county of Iron, and the same and the matters in error assigned having been seen and inspected and duly considered by the court, and it appearing to this court that in said record and proceedings and in the giving of judgment in said circuit court there is no error, therefore it is ordered and adjudged that the judgment of said circuit court for the county of Iron be, and the same is hereby, in all things affirmed.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom and of the whole of said original order.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this — day of ——, in the year of our Lord one thousand eight hundred and eighty —.

—— ——, *Clerk.*

50 UNITED STATES OF AMERICA,
*State of Michigan.*

To the Honorable Thomas R. Sherwood, chief justice of the supreme court of the State of Michigan:

The petition of Henry Lyng respectfully shows that on the fifth day of June, A. D. 1889, a final judgment was rendered against your petitioner affirming a judgment of the circuit court for the county of Iron, in the State of Michigan, adjudging him guilty of selling malt, brewed, and fermented liquors at wholesale without having paid the tax required by law, and further adjudging that he pay a fine of one hundred dollars, as will appear by reference to the record and proceedings in said cause.

Your petitioner shows that said judgment was rendered by the supreme court of the State of Michigan in a certain cause wherein The People of the State of Michigan was plaintiff and Henry Lyng defendant, and that said court is the highest court of said State in which a decision in said suit could be had.

And your petitioner claims the right to remove said judgment to the Supreme Court of the United States by writ of error under section 709 of the Revised Statutes of the United States, because in said judgment there was drawn in question the validity of a statute of said State, to wit, act No. 313 of the Public Acts of Michigan, passed at the session of 1887, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of the validity of said statute, as appears by the record of the proceedings in said cause.

Wherefore your petitioner prays the allowance of a writ of error, returnable into the Supreme Court of the United States,
51 and for citation and supersedeas; and your petition will ever pray, etc.

HENRY LYNG, *Petitioner.*
PHILLIPS & THOMPSON,
*Attorneys for Petitioner.*

Let the writ of error issue as prayed.
Dated June 6th, 1889.

T. R. SHERWOOD,
*Chief Justice of the Supreme Court of the State of Michigan.*

[Endorsed:] 10556. Filed June 19, 1889. Chas. C. Hopkins, clerk.

52 UNITED STATES OF AMERICA:

Supreme Court.

HENRY LYNG, Plaintiff in Error,
*vs.*
THE PEOPLE OF THE STATE OF MICHIGAN, Defendant in Error.

Now comes the said Henry Lyng, plaintiff in error, and for an assignment of errors herein says that at the May term of the circuit court for the county of Iron, in the State of Michigan, in a certain cause therein pending, in which he, the said Henry Lyng, was defendant and the said People of the State of Michigan were plaintiff, a judgment was rendered against him, said Henry Lyng, and in favor of said people, convicting him upon a criminal charge of selling malt, brewed, and fermented liquors at wholesale without having paid the tax required by law, and adjudging that he pay a fine of one hundred dollars.

And the said Henry Lyng represents furthermore that at the June term, A. D. 1889, of the supreme court of the State of Michigan, which is the highest court of law and equity in said State in which a decision of said case can be had, said judgment was by said supreme court of the State of Michigan affirmed; all of which will

more fully appear by an authenticated transcript of said cause herewith filed.

And the said Henry Lyng says that in rendering said judgment error intervened to his prejudice, as will appear by said record,
53 and that among the errors so intervening are the following:

I. The court erred in deciding in favor of the validity of act No. 313 of Public Acts of Michigan, passed at the session of 1887, under which said judgment was rendered, and in holding that said act does not operate as a regulation of commerce among the States in a matter within the exclusive power of Congress, and that it is not for that reason repugnant to section 8 of article I of the Constitution of the United States.

Whereupon he prays that said judgment may be reversed.

B. J. BROWN,
*Attorney for Plaintiff in Error.*

53½ [Endorsed:] 10556. Filed June 19, 1889. Chas. C. Hopkins, clerk.

54 UNITED STATES OF AMERICA:

To the People of the State of Michigan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Michigan, wherein Henry Lyng is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in this behalf.

Witness the Honorable Thomas R. Sherwood, chief justice of the supreme court of the State of Michigan, this 19th day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

T. R. SHERWOOD.

Charles C. Hopkins, clerk of the supreme court of the State of Michigan, being duly sworn, deposes and says that on the nineteenth day of June, A. D. 1889, he served duplicate copies of the foregoing citation on Hon. Cyrus G. Luce, Governor of the State of Michigan, and on Hon. S. V. R. Trowbridge, attorney general of said State, by giving the same to them personally in their offices in the city of Lansing, in said State.

CHAS. C. HOPKINS.

Subscribed and sworn to before me this 6th day of July, A. D. 1889.

[Seal Geo. A. Dyer, Notary Public, Ingham Co., Mich.]

GEO. A. DYER,
*Notary Public, Ingham County, Michigan.*

[Endorsed:] 10556. Filed Jul- 6, 1889. Chas. C. Hopkins, clerk supreme court.

Whereas lately, at Lansing, Michigan, in the supreme court of the State of Michigan, in a suit depending in said court between The People of the State of Michigan, defendant in error, and Henry Lyng, plaintiff in error, a final judgment was rendered against the said Henry Lyng, plaintiff in error, and the said Henry Lyng having obtained a writ of error to remove the said cause to the Supreme Court of the United States and filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United States to reverse the said final judgment in the aforesaid suit:

Now we, Henry Hagemeister, of Green Bay, in the county of Brown and State of Wisconsin, and Franz Hagemeister, of town of Preble, in the county of Brown and State of Wisconsin, undertake and bind ourselves to pay or cause to be paid to James H. McKenney, clerk of the Supreme Court of the United States, or his successors in office, all fees that shall accrue to him, the said clerk, and be charged to said Henry Lyng in the prosecution of said writ of error.

Witness our hands and seals this sixteenth day of August, A. D. 1889.

FRANZ HAGEMEISTER. [SEAL.]
HENRY HAGEMEISTER. [SEAL.]

Signed and sealed in presence of—
GEO. SCHOBER,
BERNARD M. HUBER.

I, Henry Watermolen, clerk of the circuit court for the county of Brown, in the State of Wisconsin, do hereby certify that the within-named obligors are known to me to be perfectly good and responsible for any costs that might accrue in said case.

[Seal Circuit Court, Brown Co., Wisconsin.]

HENRY WATERMOLEN,
*Clerk Circuit Court, Brown Co., Wis.*

RULE No. 10.—Security for costs.—In all cases the plaintiff in error or appellant, on docketing a cause and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction, for the payment of his fees, or otherwise satisfy him in that behalf.

Attachment for costs.—Upon the clerk of this court producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, or having served a copy of the bill of fees due by them respectively in this court on such parties or their sureties, an attachment shall issue against such parties or sureties respectively to compel payment of the said fees.

[On margin:] N. B.—Two sureties required. Insert the post-office address (and, if in a city, the streets and numbers) of the sureties. The party (pl'ff in error or appellant) must not join in the undertaking.

56 [Endorsed:] 10556. Bond to clerk. Filed Aug. 22, 1889. Chas. C. Hopkins, clerk.

[Endorsed:] Supreme Court U. S. 188–, October term. No. —. Stipulation for costs. —— ——, —— ——, sureties. Deposit of $— by —— ——. Filed —— —, 188–.

57 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between The People of the State of Michigan, plaintiff, and Henry Lyng, defendant, wherein was drawn in question the validity of a statute of said State on the ground of its being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such its validity, a manifest error hath happened to the great damage of the said Henry Lyng, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 12 day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

[Seal of the U. S. Circuit Court, Southern Division, Western District of Mich.]

CHARLES L. FITCH,
*Clerk of the Circuit Court of the United States for the Western Dist. of Michigan.*

Allowed by—
T. R. SHERWOOD,
*Chief Justice.*

58 To the Supreme Court of the United States:

The execution of the within writ appears by the transcript of record hereto annexed.

Lansing, August 23, 1889.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
*Clerk of the Supreme Court of the State of Michigan.*

[Endorsed:] 10556. Filed June 19, 1889. Chas. C. Hopkins, clerk.

| 59 Parties. | Plaintiff's attorneys. | Defendant's attorneys. |
|---|---|---|
| The People of the State of Michigan, plaintiff, *vs.* Henry Lyng, def't & app'l't. | S. V. R. Trowbridge, att'y gen'l.<br>C. T. Crandall, pros. att'y.<br>Error to Iron. | Phillips & Thompson. |

| Costs. | Journal. | Date. | Proceedings. |
|---|---|---|---|
| | | 1889. | |
| | | May 13 | Præcipe filed & writ issued, ret. June 3, '89. |
| | | " 17 | Proof of issuing writ filed. |
| | | " 20 | Return filed. |
| | | " 20 | Assignment of errors filed. |
| | | " 20 | Note of argument filed. |
| | 1—449--- | June 5 | Judgment affirmed. |
| | | " 19 | Petition for allowance of writ of error to Supreme Court U. S. & allowance by Chief Justice endorsed thereon filed. |
| | | " 19 | Writ of error to Supreme Court U. S. allowed by Chief Justice filed. |
| | | " 19 | Copy of writ for adverse party filed. |
| | | " 19 | Assignment of errors in Supreme Court filed. |
| | | July 6 | Citation with proof of service on Governor and attorney general filed. |
| | | Aug. 22 | Bond to clerk Supreme Court U. S. filed. |
| | | " 23 | Record transmitted to Supreme Court, Washington. |

[Endorsed:] No. —. State of Michigan. The —— court for the —— of ——, in chancery. —— ——, complainant, *vs.* —— ——, defendant. Certified copy of calendar entries in supreme court. Filed ——, 188–. —— ——, clerk. —— ——, attorney for ——.

60 STATE OF MICHIGAN:

In the Supreme Court.

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,
*vs.*
HENRY LYNG, Defendant & Appellant.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the above and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court upon both hearings, as appears of record and on file in my office; that the cause was first brought to this court upon exceptions before sentence, and the court below was directed to proceed to judgment; that immediately after said sentence a writ of error was sued out and the cause again brought to this court, where, upon a hearing, the judgment below was affirmed, no written opinion being filed upon the second hearing; that I have compared the same with the original, and it is a true transcript therefrom and of the whole thereof.

That attached thereto are the writ of error with allowance endorsed thereon, the citation with proof of service, the bond to the clerk of the Supreme Court of the United States, and the assignment of errors by the plaintiff in error in the Supreme Court of the United States; that at the time the said writ of error was served upon me there was lodged with me for the adverse party a copy of such writ.

Seal of the Supreme Court of Michigan, Lansing.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this twenty-third day of August, A. D. 1889.

CHAS. C. HOPKINS,
*Clerk of the Supreme Court of Michigan.*

Endorsed on cover: Michigan supreme court. No. 1219. Henry Lyng, plaintiff in error, *vs.* The People of the State of Michigan. Filed September 5, 1889.

SUPREME COURT U.S.
FILED.
FEB 19 1890
JAMES H. MCKENNEY
CLERK

# BRIEF FOR PLAINTIFF IN ERROR.

## Supreme Court of the United States.

**OCTOBER TERM, 1889.**

No. 1219.

HENRY LYNG, PLAINTIFF IN ERROR,

*vs.*

THE PEOPLE OF THE STATE OF MICHIGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

H. O. FIFIELD, PRINTER, MENOMINEE, MICH.

# Supreme Court of the United States.

HENRY LYNG,
PLAINTIFF IN ERROR,
*vs.*
THE PEOPLE OF THE STATE OF MICHIGAN,
DEFENDANT IN ERROR.

NO. 1219.

## STATEMENT OF THE CASE.

As this case went twice to the Michigan Supreme Court, and copies of the records upon both hearings there have been certified to this Court and printed, considerable matter appears twice in the record here.

Plaintiff in Error was prosecuted and convicted, at the September term of the Circuit Court for Iron county, Michigan, under an information which alleges substantially that on July 19th, 1888, at the village of Iron River, in the county of Iron, in the State of Michigan, the plaintiff in error was a person whose business consisted in part of selling at wholesale, brewed and malt liquors (not proprietary patent medicines) as agent for Franz Hagemeister and Henry Hagemeister, copartners doing business in the city of Green Bay, Wisconsin, under the firm name of Hagemeister & Son, without he or they having paid in full or in part the tax required by law to be paid upon the business, neither he nor they being druggists selling liquors for chemical or sacramental purposes only, and in strict compliance with law.

Record, page 4.

The facts were conceded upon the trial of the case, and are substantially as follows: Franz and Henry Hagemeister, of Green Bay, Wisconsin, who are citizens of the United States, are engaged in the manufacture of lager beer at Green Bay aforesaid, where they have a brewery for the manufacture thereof; that such lager beer is brewed liquor, within the meaning of act No 313 of the laws of Michigan for 1887; that said Hagemeister & Son own a warehouse in the village of Iron River, in the township of Iron, in the county of Iron, and State of Michigan, to which they ship quantities of their beer made at Green Bay, and there store it until it is disposed of. The plaintiff in error is employed by them to take care of this warehouse, sell and deliver the beer therein and collect and remit the proceeds of sales. The beer was always sold in the original casks in which it was brought into the State and in quantities exceeding three gallons, and on the 19th of July, 1888, such sales were made to Martin Lally and others.

Record, page 6.

The statement of facts agreed upon should also have contained the statement that sales were made only to regular retail dealers who had paid the tax and otherwise complied with the statute. Such was the undisputed fact and the case has been treated from the beginning as one not involving promiscuous sales.

Plaintiff in error, by his counsel, requested the Court to charge the jury to find a verdict of not guilty, upon the ground that the law under which the prosecution was had, being act No. 313 of the Public Acts of Michigan, for 1887, is repugnant to section 8 of article 1 of the Constitution of the United States, for the reason that it operates as a regulation of commerce among the States, in a matter within the exclusive power of Congress. The formal request was simply to find a verdict of not guilty (Record, page 7), but the question of the constitutionality of the Michigan statute was fully argued to the Court upon the request, and the grounds upon which the charge was asked appear from the charge of the Court (Record, page 8), where he said: "Now, the defense sets up that this

law under which this prosecution is brought, which it is claimed requires him to pay a license, that it is unconstitutional and that it is in conflict with that clause of the constitution which confers the regulation of State commerce and commerce between the States upon Congress."

The request was refused, to which refusal exception was duly taken, and the jury was charged that the statute was valid, and the plaintiff in error was convicted.

Record, pages 7 and 5.

The case went to the Supreme Court on exceptions before judgment, and the conviction was affirmed, and the case remanded to the Circuit Court with instructions to proceed to judgment. The opinion filed in the Supreme Court upon this hearing (Record, pages 11 to 18) shows that the constitutionality of the statute in question was before the Court, and was passed upon, and the statute declared valid. At the May term of the Iron County Circuit Court for 1889 plaintiff in error was sentenced to pay a fine of $100.

Record, page 25.

A writ of error was taken out to the State Supreme Court, and at the June term thereof the case was again affirmed. (Record, pages 31 and 32.) No opinion was filed upon the second hearing, the Court merely adhering to its former ruling and directing a judgment of affirmance to be entered. (Record, pages 19 and 32.) From that judgment the case was taken to this Court on a writ of error.

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Act No. 313 of 1887, under which the conviction was had, is in part as follows:

"Section 1. *The People of the State of Michigan enact:* That in all townships, cities and villages of this State there shall be paid annually the following tax upon the business of manufacturing, selling or keeping for sale, by all persons whose business, in whole or in part, consists in selling or keeping for sale, or manufacturing distilled or brewed or malt liquors or

mixed liquors, as follows: Upon the business of selling or offering for sale spirituous or intoxicating liquors, or mixed liquors by retail, or any mixture or compound, excepting proprietary patent medicines, which in whole or in part consist of spirituous or intoxicating liquors, and any malt, brewed, or fermented liquors, five hundred dollars per annum; upon the business of selling only brewed or malt liquors at wholesale or retail, or at wholesale and retail, three hundred dollars per annum; upon the business of selling spirituous or intoxicating liquors at wholesale, five hundred dollars; or at wholesale and retail, eight hundred dollars per annum; upon the business of manufacturing brewed or malt liquors for sale, sixty-five dollars per annum; upon the business of manufacturing for sale spiritous or intoxicating liquors, eight hundred dollars per annum. No person paying a tax on spirituous or intoxicating liquors under this act shall be liable to pay any tax on the sale of malt, brewed or fermented liquors. No person paying a manufacturer's tax on brewed or malt liquors under this act shall be liable to pay a wholesale dealer's tax on the same."

"Sec. 2. Retail dealers of spirituous or intoxicating liquors, and brewed, malt and fermented liquors, shall be held and deemed to include all persons who sell any of such liquors by the drink, and in quantities of three gallons or less, or one dozen quart bottles or less, at any one time, to any person or persons. Wholesale dealers shall be held and deemed to mean and include all persons who sell or offer for sale such liquors and beverages in quantities of more than three gallons, or more than one dozen quart bottles, at any one time, to any person or persons. No tax imposed under this act shall be required from any person for selling any wine or cider made from fruits grown or gathered in this State, unless such wine or cider be sold by the drink as other beverages are."

Section 3 applies to druggists, and need not be quoted here.

"Section 4. Every person engaged, in or intending to engage in any business named in section one of this act, and requiring the payment of any tax mentioned in said section one, shall,

on or before the first day of May in each year, make and file with the county treasurer in the county where it is proposed to carry on such business, a statement in writing and on oath, showing the name and residence of such person, the ward, village or township in which it is proposed to carry on such sale or manufacture, and the nature of the business which such person is engaged in, or is intending to engage in; and shall, on or before the first day of May in each year, pay to the said county treasurer, in advance, the taxes required by said section one for such business for the year commencing on said first day of May and ending on the thirtieth day of April next thereafter."

"Section 7. If any person or persons shall engage or be engaged in any business requiring the payment of a tax under section one of this act without having paid in full the tax required by this act, and without having the receipt and notice for such tax posted up as required by this act, or without having made, executed and delivered the bond required by this act, or shall in any manner violate any of the provisions of this act, such person or persons shall be deemed guilty of a misdemeanor, and, upon conviction thereof, if there is no specific penalty provided therefor by this act, shall be punished by a fine of not more than two hundred dollars and costs of prosecution, or by imprisonment in the county jail not less than ten days nor more than ninety days, or both such fine and imprisonment, in the discretion of the Court. And in case such fine and costs shall not have been paid at the time such imprisonment expires the person serving out such sentence shall be further detained in jail until such fine and costs shall have been fully paid: *Provided*, that in no case shall the whole term of imprisonment exceed six months. And any person or persons engaged in any business requiring the payment of a tax under section one of this act, who, after paying the tax so required, shall be convicted of the violation of any of the provisions of this act, shall thereby, in addition to all other penalties prescribed by this act, forfeit the tax so paid by him or them, and be precluded from continuing such business for

the remainder of the year or time for which said tax was paid, and be debarred from again engaging in any business requiring the payment of a tax under section one of this act, or from becoming a surety or sureties upon any bond required under section seven of this act, for the period of one year from the time of such conviction. Each violation of any of the provisions of this act shall be construed to constitute a separate and complete offense, and for each violation on the same day, or on different days, the person or persons offending shall be liable to the penalties and forfeitures herein provided, and be precluded and debarred from continuing or engaging in any business requiring the payment of a tax under this act as aforesaid. And it shall be the duty of sheriffs, marshals, constables and police officers to forthwith close all saloons and other places where the business of manufacturing, selling or keeping for sale any of the liquors mentioned in section one of this act is being conducted upon which business the tax required by said section one has not been paid in full, and in which the receipt mentioned in section five of this act shall not be posted up and displayed."

"Section 24. All persons engaged in the business of selling or keeping for sale any of the liquors mentioned in this act, whether as owner or as clerk, agent or servant or employe, shall be equally liable as principals for any violation of any of the provisions of this act, and any person or principal shall be liable for the act of his clerk, servant, agent or employe for any violation of the provisions of this act."

The only assignment of error in this Court is, that the State Supreme Court "erred in deciding in favor of the validity of Act No. 313 of Public Acts of Michigan passed at the session of 1887, under which said judgment was rendered, and in holding that said act does not operate as a regulation of commerce among the States, in a matter within the exclusive power of Congress,

and that it is not, for that reason, repugnant to Section 8 of Article I of the Constitution of the United States."

## ARGUMENT.

We claim that the statute in question is in conflict with Art. I, Sec. 8, Subdivision 3 of the Constitution of the United States, for two reasons:

1. It lays a tax upon a business which belongs strictly to inter-State commerce, and forms a part thereof.

2. In laying the tax it discriminates between malt and brewed liquors made in Michigan and those not made in Michigan, unfavorably to those not made in Michigan.

### I.

The facts show that the plaintiff in error is merely an employe of Hagemeister & Son. He is not carrying on any business requiring the payment of a tax under this statute, as the tax is imposed "on the business," and therefore on the principal, not on agents or employes, and the payment of the tax by an agent, in his own name, would be no protection to the principal.

*Section 1 of Act 313, Supra.*

*Walling v. Michigan, 116 U. S. 459,* where a similarly worded statute is construed as applying to principals only.

The sole question, therefore, is, could Hagemeister & Son legally bring their beer from their Wisconsin brewery to their warehouse at Iron River, and there store it and sell it in the original casks, without paying the wholesale dealers' tax of $300 per annum; for if they can legally do these things they can legally employ plaintiff in error to do them in their stead, and he can legally accept and fulfill such employment.

In support of the first position assumed by plaintiff in error, the following principles are relied upon:

1. The power of Congress to regulate commerce among the States is exclusive, where the subject is of a nature to admit of general regulations.

2. So long as Congress does not pass any law to regulate such commerce, in any particular, it thereby indicates its will that such commerce, in that particular, shall be free and untrammeled, and no State has power to regulate it.

3. An attempt on the part of a State to tax any commodity, or business, which belongs strictly to such commerce, and forms a part thereof, is an attempt to regulate such commerce.

4. The importation of intoxicating liquors from one State into another, and their sale in the latter State, by the importer, at wholesale, and in the original casks or packages in which they are introduced, is a branch of inter-State commerce, and is of a nature which admits of, and requires, uniformity of regulation.

These principles, except the last, are too well established by repeated decisions of this Court, to admit of argument. It would seem, also, that the last must necessarily follow from what has already been decided. Among the authorities upon these questions are the following:

The concurring opinion of Mr. Justice Field in *Bowman v. C. & N. W. Ry. Co., 125 U. S., at page 507:* "The doctrine now firmly established is that where the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons or buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers, and docks, and the like, which can be properly regulated only by special provisions adapted to their localities, the State can act until Congress interferes and supersedes its authority; but where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the States, such as transportation between the States, including the

importation of goods from one State into another, Congress can alone act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free. Thus the absence of regulations as to interstate commerce with reference to any particular subject is taken as a declaration that the importation of that article into the States shall be unrestricted. It is only after the importation is completed, and the property imported has mingled with and become a part of the general property of the State, that its regulations can act upon it, except so far as may be necessary to insure safety in the disposition of the import until thus mingled."

*County of Mobile v. Kimball, 102 U. S., page 697*, where it is said: "The subjects, indeed, upon which Congress can act under this power are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character, and admit and require uniformity of regulation, affecting alike all the States; others are local, or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the States, which consists in the transportation, purchase, sale and exchange of commodities. Here there can of necessity be only one system or plan of regulations, and that Congress alone can prescribe. Its non-action in such cases with respect to any particular commodity or mode of transportation is a declaration of its purpose that the commerce in that commodity or by that means of transportation shall be free. There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and citizens, and against the products and citizens of other States. And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States was to insure uniformity of regulation against conconflicting and discriminating State legislation."

In the same opinion, upon page 702, the Court says: "Perhaps some of the divergence of views upon this question among former Judges may have arisen from not always having in mind the distinction between commerce as strictly defined, and its local aids or instruments, or measures taken for its improvement. Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities. For the regulation of commerce as thus defined, there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate States is not, therefore, permissible."

In *Robbins v. Shelby County Taxing District, 120 U. S., at page 497*, it is said: "It is strongly urged, as if it were a material point in the case, that no discrimination is made between domestic and foreign drummers—those of Tennessee and those of other States; that all are taxed alike. But that does not meet the difficulty. Interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State." *See also page 492.*

*Bowman v. C. & N. W. Ry. Co., 125 U. S., 496*, where it is said: "It would be error to lay any stress on the fact that the statute passed upon in that case (Walling v. Michigan) made a discrimination between citizens and products of other States in favor of those of the State of Michigan, notwithstanding the intimation on that point in the foregoing extract from the opinion. This appears plainly from what was decided in the case of Robbins v. Shelby County Taxing District." *See also page 480, etc.*

*Leloup v. Port of Mobile, 127 U. S., 640-648.*

*Asher v. Texas, 128 U. S., 129.*

*Brown v. Houston, 114 U. S., 631.*

*Welton v. Missouri, 91 U. S., 282.*
*Walling v. Michigan, 116 U. S., 455.*

It need not be argued that intoxicating liquors, including malt and brewed liquors, are recognized articles of commerce, to which the same rules are applicable as to other commodities. They have always been so recognized by this Court.

*Hinson v. Lott, 8 Wallace, 150.*
*Walling v. Michigan, Supra.*
*Bowman v. C. & N. W. Ry. Co., 125 U. S., 475, etc., and cases there cited.*

Congress so recognizes them by laying a tax upon their production and sale. *Rev. St. of the U. S., §3335 to §3354.*

Even the Michigan statute under discussion recognizes them as legitimate articles of commerce.

Under the terms of this statute, the manufacturer of malt or brewed liquors made outside of Michigan cannot introduce them into the hands of consumers, or retail dealers, in that State, without becoming subject to this tax of three hundred dollars per annum, in every township, village or city, where they are introduced. *Section 2* defines wholesale dealers a "all persons who sell or offer for sale such liquors and beverages in quantitities of more than three gallons, or more than one dozen quart bottles, at any one time, to any person or persons." It is not necessary that a person offering such products for sale should have them with him in the State, to make him liable to the payment of the tax. If he sells or offers for sale by sample, he is still within the terms of the statute. Nevertheless, if the State authorities were attempting to enforce the statute against a person who was engaged in selling goods by sample, before the goods themselves had been introduced into the State, the Court would not hesitate to hold their action illegal, under the authority of *Robbins v. Taxing District of Shelby County, 120 U. S., 489*, as that was the precise point there decided, and affirmed in *LeLoup v. Port of Mobile, 127 U. S., 645-6-7*, and *Asher v. Texas, 128 U. S., 129.* Can it make any difference that the goods have been brought into the State of Michigan, remaining, nevertheless, in the original casks or packages, in the warehouse of the manufacturers, until sold? The product has not mingled with the general mass of property in the State, nor been broken up for retail sales. The authority of the State to levy a tax upon the beer, in the warehouse at Iron River, as so much personal property, would not be questioned. The general tax law of the State provides for such a tax (*Public Acts of Michigan for 1885, Act No. 153, Sec. 11, First Division*), and no doubt it was levied and collected, though upon that point there is no evidence. But it being made the duty of the taxing officers to levy and collect a general tax upon Hagemeister & Son's property in Iron River, will not the Court presume that the

officers performed their duty in that respect, and collected the tax? But the tax under the statute in question is not imposed upon the property because it is within the State, or according to its value, but arbitrarily upon the business, regardless of whether or not a dollar's worth of the property is within the State.

In the case of *Woodruff v. Parham, 8 Wallace, 123*, a State law exacting a license fee from auctioneers was held valid, notwithstanding a portion of the goods sold by the auctioneer were imported from other States. But that case is clearly distinguishable from this. This distinction is pointed out in the opinion of the Court in *Brown v. Maryland, 12 Wheaton, at page 443*, where it is said: "Auctioneers are persons licensed by the State, and if the importer chooses to employ them, he can as little object to paying for this service as for any other for which he may apply to an officer of the State. The right of sale may very well be annexed to importation, without annexing to it, also, the privilege of using the officers licensed by the State to make sales in a peculiar way."

If the statute under consideration in *Woodruff v. Parham* had also declared that no one but an auctioneer should be allowed to make sales, the situation would have been more like the one presented in this case; and yet not exactly like it, for here—and the Michigan Supreme Court lay much stress on the distinction (*Record, page 14*)—the fee is not for a license, carrying with it special privileges, but a tax, the payment of which confers no privileges which may not be enjoyed by all who see fit to pay it.

That articles imported into a State, from another State, as well as those imported from foreign countries, retain their distinctive character so long as they remain in the original, unbroken packages or casks, and in the hands of the importer, now appears to be the established law, and at least one case, to which attention will be called later, intimates that under some conditions the commercial power of the General Government, under the Constitution, may go further still. This was

the doctrine of the familiar case of *Brown v. Maryland, 12 Wheaton*, where, at page *439*, it is said: "There is no difference, in effect, between a power to prohibit the sale of an article and a power to prohibit its introduction into the country. The one would be a necessary consequence of the other. No goods would be imported if none could be sold. No object of any description can be accomplished by laying a duty on importation, which may not be accomplished with equal certainty by laying a duty on the thing imported in the hands of the importer. It is obvious that the same power which imposes a light duty can impose a very heavy one, one which amounts to a prohibition. Questions of power do not depend on the degree to which it may be exercised. If it may be exercised at all, it must be exercised at the will of those in whose hands it is placed."

And at *page 446:* "If this power reaches the interior of a State, and may be there exercised, it must be capable of authorizing the sale of those articles which it introduces. Commerce is intercourse; one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic, when given in the most comprehensive terms, with the intent that its efficacy should be complete, should cease at the point when its continuance is indispensable to its value. To what purpose should the power to allow importation be given, unaccompanied with the power to authorize a sale of the thing imported? Sale is the object of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right, not only to authorize importation, but to authorize the importer to sell."

*Page 448:* "If the principles we have stated be correct, the result to which they conduct us cannot be mistaken. Any penalty inflicted on the importer for selling the article in his character of importer, must be in opposition to the act of

Congress which authorizes importation. Any charge on the introduction and incorporation of the articles into and with the mass of property in the country, must be hostile to the power given to Congress to regulate commerce, since an essential part of that regulation, and principal object of it, is to prescribe the regular means for accomplishing that introduction and incorporation." And on *page 442:* "The counsel for the plaintiffs in error contended that the importer purchases, by payment of the duty to the United States, a right to dispose of his merchandise, as well as to bring it into the country; and certainly the argument is supported by strong reason, as well as by the practice of nations, including our own."

The goods which were the subject of the controversy in *Brown v. Maryland* were brought from a foreign country, but it would be difficult to imagine any tax upon such imports which would not be a regulation of commerce among the States, if the goods had been brought from another State, and the language applied to imports from foreign countries, in the above quotation, is equally applicable to goods imported from another State. Adapting that language to the facts of this case, it may be said that, by paying the tax which the United States exacts of him, the manufacturer of brewed or malt liquors purchases the right to dispose of his product, as well as to make it.

If we correctly interpret the late decisions of this Court, the doctrines of *Brown v. Maryland* are now as firmly established as though they had never been questioned in several intermediate cases. Those cases, including the *License Cases, 5 Howard, 504*, relied upon by the State Court, as well as *Hinson v. Lott, 8 Wallace, 148*, are distinctly overruled. In fact, the *License Cases* never established any doctrine or principle. There was no opinion filed in which a majority of the Court concurred. It appears, however, that the Chief Justice (*page 573*) and Associate Justices Catron and Nelson (*pages 597 and 618*) and probably also Justices McLean and Wayne, thought the New Hampshire

statute a regulation of commerce among the States, but held it valid because Congress had not legislated upon the subject, holding the power of Congress not to be exclusive, but to admit of legislation on the part of the States not adverse to the action of Congress. If the exclusive character of the power of Congress over interstate commerce had then been recognized, as it is now, it is not unlikely that, in the New Hampshire case, a different result would have been reached.

The following are some of the cases which re-establish the authority of *Brown v. Maryland*.

*LeLoup v. Port of Mobile, 127 U. S., 648*, where it its said: "A great number and variety of cases involving the commercial power of Congress have been brought to the attention of this Court during the past fifteen years which have frequently made it necessary to re-examine the whole subject with care; and the result has sometimes been that in order to give full and fair effect to the different clauses of the Constitution, the Court has felt constrained to recur to the fundamental principles stated and illustrated with so much clearness and force by Chief Justice Marshall and other members of the Court in former times, and to modify in some degree certain dicta and decisions that have occasionally been made in the intervening period. This is always done, however, with great caution, and an anxious desire to place the final conclusion reached upon the fairest and most just construction of the Constitution in all its parts.

"In our opinion such a construction of the Constitution leads to the conclusion that no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress. This is the result of so many recent cases that citation is hardly necessary."

*County of Mobile v. Kimball, 102 U. S., 701.*
*Walling v. Michigan, 116 U. S., 455.*
*Welton v. Missouri, 91 U. S., 279-80.*
*Henderson v. Mayor of N. Y., 92 U. S., 259.*
*Bowman v. C. & N. W. Ry. Co., 125 U. S., 507.*
*Asher v. Texas, 128 U. S., 132.*

II.

The statute complained of discriminates against malt and brewed liquors manufactured outside the State of Michigan.

For convenience, the portions of the statute to which the attention of the Court is now desired, are given below:

"*Section 1.* In all townships, cities and villages in this State there shall be paid annually the following tax: * * * Upon the business of selling only brewed or malt liquors at wholesale or retail, or at wholesale and retail, three hundred dollars per annum. * * * Upon the business of manufacturing brewed or malt liquors for sale, sixty-five dollars per annum. * * * No person paying a manufacturer's tax on brewed or malt liquors under this act shall be liable to pay a wholesale dealer's tax *on the same.*"

It will be seen that under the last clause of the act above quoted, a person manufacturing brewed or malt liquors in the State of Michigan, may sell his manufactured product, at wholesale, in every township, city and village in the State, without becoming liable to the payment of any tax therefor, except the manufacturer's tax of $65, which is payable in the township, city or village where his brewery is located. Under the construction given this statute by the State Supreme Court, as well as the various Circuit Courts, this right extends to the establishment of stores and warehouses for such sales anywhere in the State. On the other hand, malt and brewed liquors made outside the State must pay this tax of $300 per annum in every township, city and village where they are introduced. *Record, pages 13 and 14,* where the State Supreme Court, in deciding this question, says: "It is not a question of the right of the defendant to manufacture in this State, it is a question of the right of the State to impose upon him a tax for selling at wholesale. If the beer was manufactured in this State and paid a manufacturer's tax, then sales at wholesale could be made without the payment of any further tax; but if a citizen of Michigan or any other State sees fit to manufacture his product outside of the State and brings the same into the State as a manufactured

product and sells or keeps for sale at wholesale, within the meaning of this statute, the tax is demandable, and if the business is carried on in violation of the law the penalty is to be imposed which the statute prescribed. It can make no difference that it is sold in the original packages. When one sells beer or keeps it for sale in quantities beyond three gallons or one dozen quart bottles to any person at any time he is a wholesale dealer, within the meaning of the statute, wherever such beer is manufactured within or without the State, whether sold in original packages or broken packages. If manufactured within the State, whether by a resident or non-resident, a corporation or an individual, it pays a manufacturer's tax, and sales can be made at wholesale without payment of further tax. If the product does not pay a manufacturer's tax, whether manufactured by a resident or non-resident of the State, and sales are made at wholesale, or it is kept for sale at wholesale, within the meaning of the statute, then a wholesaler's tax must be paid."

Outside manufacturers cannot pay the manufacturer's tax of $65, and thus escape payment of the wholesale dealer's tax, for before such payment can be made an affidavit must be filed, showing that the party offering to pay such tax is engaged in business, or about to engage in business, requiring the payment of such tax, in the township, etc., where the tax is offered.

*Section 4 of Act 313, given in full on page 4, ante.*

The State Supreme Court having construed the statute as exempting manufacturers of brewed and malt liquors who have paid the manufacturer's tax from the payment of any wholesale dealer's tax, its decision in that particular is conclusive, as no Federal question can arise in the case of such products made in Michigan. The question was necessarily involved in the decision of this case, as it affected the question of discrimination.

This case and another which was tried at the same term of the Circuit, and which is referred to in the charge of the Court to the jury (*Record, page 7*), illustrate the operation

of the statute. That case was exactly like this, except that the defendant was a manufacturer of beer in a city of an adjoining county of Michigan, where he had paid a manufacturer's tax of $65, under this statute. The Court held, in that case, that the defendant was not liable to pay a wholesale dealer's tax, and directed a verdict of not guilty. That was a case of Michigan beer, and it pays no tax in Iron county. This was a case of Wisconsin beer, and it must pay $300 tax there. If this Michigan brewer and these Wisconsin brewers each put up warehouses, and store and sell beer, in ten Michigan cities, the Michigan beer would pay nothing for the privilege, while the Wisconsin beer would have to pay $300 in each city, or $3000 in all. In the language of this Court, in *Walling v. Michigan, 116 U. S., 459,* "That this must give an immense advantage to the product manufactured in Michigan, and to the manufacturers and dealers of that State, is perfectly manifest."

That this statute does discriminate against malt and brewed liquors made outside of Michigan would seem too plain for argument, were it not for the denial of such discrimination by the Michigan Supreme Court.

While it would appear from the later decisions of this Court, to which reference has been made, that no State can tax any branch of interstate commerce, whether the tax is a discriminating one or not, yet it seems that the question of discrimination in the imposing of such tax may be important in determining how far imports from another State are within the protection of the Federal Constitution.

In *Welton v. Missouri, 91 U. S., at page 281,* it is said: "There is a difficulty, it is true, in all cases of this character, in drawing the line precisely where the commercial power of Congress ends and the power of the State begins. A similar difficulty was felt by this Court, in *Brown v. Maryland* in drawing the line of distinction between the restriction upon the power of the States to lay a duty on imports, and their acknowledged power to tax persons and property; but the Court observed, that the two, though quite distinguishable

when they do not approach each other, may yet, like the intervening colors between white and black, approach so nearly as to perplex the understanding, as colors perplex the vision in making the distinction between them; but that, as the distinction exists, it must be marked as the cases arose. And the Court, after observing that it might be premature to state any rule as being universal in its application, held that when the importer had so acted upon the thing imported that it had become incorporated and mixed up with the mass of property in the country, it had lost its distinctive character as an import and became subject to the taxing power of the State; but that, while remaining the property of the importer in his warehouse in the original form and package in which it was imported, the tax upon it was plainly a duty on imports prohibited by the Constitution. Following the guarded language of the Court in that case, we observe here, as was observed there, that it would be premature to state any rule which would be universal in its application to determine when the commercial power of the Federal Government over a commodity has ceased, and the power of the State has commenced. It is sufficient to hold now that the commercial power continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character. That power protects it, even after it has entered the State, from any burdens imposed by reason of its foreign origin."

*Welton v. Missouri* was a case of a man going from place to place in the State of Missouri, selling sewing machines which were manufactured outside that State, without procuring a license as a peddler, which a statute of that State required. Whether he was the agent of the manufacturers of the machines, or brought them into the State himself, or purchased them within the State, does not appear from the report of the case, and evidently was not considered of importance by the Court. The statute found the machines in his hands, and imposed a discriminating tax upon them, because "not the growth, product,

or manufacture of the State," regardlesss of whether he was the manufacturer, the importer, or a purchaser from a wholesaler or jobber within that State. The doctrine of this case seems to be—and it is eminently just, for the eye of Federal Power should be as sharp as the eye of State Power—that when a commodity introduced into a State from another State has been so marked or traced by authority of the latter State, that its identity is complete for purposes of discriminating taxation, it will not be deemed to have mingled with the property of the State, whether it remains in the hands of the original importer, in the original packages, or not, but will be sufficiently identified as a subject of interstate commerce to entitle it to the protection of the Constitution.

How could the statute discriminate between products of Michigan and those not of Michigan in plainer terms than it does? It lays a tax on all wholesale dealers, defining the term so as to include manufacturers and importers, and then exempts from the tax all dealers who manufacture the products in which they deal, in the State of Michigan. Is the exemption of Michigan products or manufactures from taxation any less a discrimination than the imposing of like taxes upon the manufactures or products of other States?

The Legislature that enacted this statute could not have been ignorant of the manner in which the business of making and selling lager beer is conducted. It cannot be stored outside of refrigerators. Transportation companies do not provide facilities for taking care of it, and those facilities must be provided by those who manufacture and sell it. As a result, there are few if any wholesale dealers, strictly speaking, but every manufacturer is his own wholesaler, selling directly to the retailers, and maintaining warehouses wherever he has customers. If he is a Michigan manufacturer, he pays no wholesale dealer's tax, and so Michigan beer pays practically no tax until it reaches the retailers, for the manufacturer's tax of $65 per annum is merely nominal. Can beer not made in Michigan escape payment of the wholesale dealers's tax until it reaches the retailers? Most assuredly it cannot, if this

statute is valid. Even if the Michigan brewer is confined to one township, city or village, in sales under his manufacturer's tax, there is still a discrimination in favor of his products, as against those from outside the State, measured by the difference between $65 and $300.

Supposing the Michigan Legislature should enact that every retail dealer in malt and brewed liquors should keep a record, showing the place of manufacture of all such liquors kept by him, for the inspection of the taxing officers, and that all such retailers selling such liquors made outside the State of Michigan should be required to pay an additional tax upon the business. Would not such a statute be a regulation of commerce among the States? Would it not give the manufacturers of such liquors in Michigan an immense advantage over those of other States? Would not the liquors so discriminated against, and so identified by the State authorities for the purpose of discriminating against them, be still within the protection of the Federal Constitution, not only after they had been brought into the State, but even in the hands of the retailer?

This Court has already held, in the case of *Bowman v. C. & N. W. Ry. Co., 125 U. S., 465*, that no State can prohibit the importation of such liquors from another State? Does it not follow that the sale of such liquors, so imported, in the original packages, by the importer, cannot be prohibited or regulated by State authority? With the following extracts from that decision, we take leave of this branch of the case:

"It is easier to think that the right of importation from abroad, and of transportation from one State to another, includes, by necessary implication, the right of the importer to sell in unbroken packages at the place where the transit terminates; for the very purpose and motive of that branch of commerce which consists in transportation, is that other and consequent act of commerce which consists in the sale and exchange of the commodities transported. Such, indeed, was the point decided in the case of *Brown v. Maryland*, as to foreign commerce, with the express statement, in the opinion

of Chief Justice Marshall, that the conclusion would be the same in a case of commerce among the States."—*Page 499.*

In the same case, at *page 504*, Mr. Justice Field says: "That the right of importation carries with it the right to sell the article imported does not appear to me doubtful. Of course I am speaking of an article that is in a healthy condition, for when it has become putrescent or diseased it has ceased to be an article of commerce, and it may be destroyed or its use prohibited. To assert that, under the Constitution of the United States, the importation of an article of commerce cannot be prohibited by the States, and yet to hold that when imported its use and sale can be prohibited, is to declare that the right which the Constitution gives is a barren one, to be used only so far as the burden of transportation is concerned, and to be denied so far as any benefits from such transportation are sought. The framers of the Constitution never intended that a right given should not be fully enjoyed."

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The State Supreme Court, in a general summary of the case, at the close of the opinion, says: "The property in question is within the jurisdiction of the State, is offered for sale, and has paid no tax. The State claims the right to regulate it by taxation, and this it may lawfully do under the police power. It is a tax local in its nature, and imposed for the purpose of restraint of the sale of a dangerous commodity."—*Record, page 18.*

The doctrine thus promulgated by the Michigan Court, plaintiff in error disputes in every particular.

That the property is not within the jurisdiction of the State, for the purposes of a tax of this nature, has already been argued.

To the second proposition, that the State may lawfully

regulate its sale by taxation, under the police power, it may be said, as was said by this Court in *Walling v. Michigan, at page 460,* "The police power cannot be set up to control the inhibitions of the Federal Constitution, or the powers of the United States Government created thereby."

The relations of the police power to the Constitution are clearly pointed out in *Mugler v. Kansas, 123 U. S., at page 661,* where it is said: "It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exertion of the police power of the State. There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute, *Sinking Fund Cases, 99 U. S., 718,* the Courts must obey the Constitution rather than the law-making department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed. 'To what purpose,' it was said in *Marbury v. Madison, 1 Cranch, 137, 167,* 'are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The Courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty —indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the Legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the Courts to so adjudge, and thereby give effect to the Constitution."

And at *page 663:* "Undoubtedly the State, when provid-

ing, by legislation, for the protection of the public health, the public morals, or the public safety, is subject to the paramount authority of the Constitution of the United States, and may not violate rights secured or guaranteed by that instrument, or interfere with the execution of the powers confided to the General Government. *Henderson v. Mayor of N. Y., 92 U. S., 259; Hannibal & St. J. R. R. Co. v. Husen, 95 U. S., 465; New Orleans Gas Light Co. v. Louisiana Light Co., 115 U. S., 650; Walling v. Michigan, 116 U. S., 446; Yick Wo v. Hopkins, 118 U. S., 356; Morgan's Steamship Co. v. Louisiana Board of Health, Id. 455.*"

Are the portions of the statute complained of a proper exercise of the police power? Intoxicating liquors in sealed casks or packages are not intrinsically dangerous. They must be consumed to become harmful, and as they do not, except rarely, reach the consumers in that form, but first go through the hands of retailers, by whom they are broken up and distributed, there is ample opportunity for the police power to act upon them after they leave the hands of the importer.

Nor can this tax, strictly speaking, be said to be "local in its nature," in such a sense as to make the statute prescribing it a local regulation. That statute lays an equal tax in every township, village and city in Michigan, and is therefore as general as any tax law of that State can be. It is certainly as broad as the jurisdiction of the State by which it is attempted to be bolstered, and somewhat broader, if the views here contended for are correct. In this respect it differs widely from the local regulations discussed in *Cooley v. Port Wardens, 12 Howard, 299*, and various other cases in this Court, such as regulation of pilotage, or the location of buoys in a certain harbor, the construction of a bridge over a certain navigable stream at a given point, etc.

Nor does an examination of those parts of the statute which apply to wholesalers of malt and brewed liquors bear out the claim that it was intended for "restraint of the sale of a dangerous commodity." It places Michigan manufacturers in a more advantageous position than those from other States, and therefore tends to increase the number of breweries in that State, and presumably the amount of brewed and malt liquors consumed there. It could scarcely have been expected to restrain the consumption of such liquors, though it might the importation of them. It appears, however, to have been intended merely as an easy means of raising revenue, and at the same time protecting Michigan brewers from competition with those whose manufactories are located beyond the limits of that State.

HOWARD E. THOMPSON,
*Of Counsel for Plaintiff in Error.*

Office Supreme Court U. S.
FILED,
MAR 13 1890
JAMES H. MCKENNEY,
CLERK.

# Supreme Court of the United States.

HENRY LYNG,
*Plaintiff in Error,*

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,
*Defendant in Error.*

*No. 1219.*

## BRIEF FOR DEFENDANT IN ERROR.

LANSING:
ROBERT SMITH & CO., STATE PRINTERS AND BINDERS.
1890.

# Supreme Court of the United States.

HENRY LYNG,
PLAINTIFF IN ERROR,

*v.*

THE PEOPLE OF THE STATE OF MICHIGAN,
DEFENDANT IN ERROR.

*No. 1,219.*

This case comes before this court upon writ of error to the Supreme Court of the State of Michigan. The plaintiff in error was prosecuted and convicted in the circuit court for the county of Iron, in the State of Michigan, upon an information alleging substantially, that on July 19, 1888, at the village of Iron River, in the county of Iron, in said State, the plaintiff in error, respondent in those proceedings, was a person whose business consisted in selling at wholesale, brewed and malt liquors (not proprietary patent medicines) as agent for Franz Hagemeister and Henry Hagemeister, co-partners, doing business in the city of Green Bay, Wisconsin, under the firm

name of Hagemeister & Son, and neither said plaintiff in error nor said Hagemeister & Son having paid the tax required by law to be paid upon the business, and neither he nor they being druggists selling liquors for chemical, medicinal or sacramental purposes only, and in strict compliance with the law. The case was taken to the Supreme Court of the State of Michigan upon error, and affirmed by said court June 5th, 1889, and subsequently removed to this court.

The conceded facts are that Franz and Henry Hagemeister were citizens of the United States, living at Green Bay, Wisconsin, and there owning and conducting a brewery for the manufacture of lager beer, under the name of Hagemeister & Son; that such lager beer so manufactured was brewed liquor within the meaning of act number 313 of the laws of Michigan for 1887; that said Hagemeister & Son owned a warehouse in the village of Iron River, in the township of Iron River, in the county of Iron, and State of Michigan, where quantities of their lager beer so made by them at Green Bay, in the State of Wisconsin aforesaid, and from there shipped to their said warehouse in the village of Iron River, were stored and disposed of; that defendant, Henry Lyng, was employed as the agent of Hagemeister & Son at a regular salary, to look after said warehouse, to take orders for and deliver said beer in quantities exceeding three gallons, and to collect and remit the proceeds from said sales to Hagemeister & Son, and that he was so

employed on the 19th day of July, 1888; that on said 19th day of July, at the village of Iron River, in said county of Iron, and State of Michigan, said defendant in the course of his said employment, delivered from said warehouse to Martin Lally and other persons, all of whom paid him therefor, certain quantities of said lager beer in quantities exceeding three gallons, said beer so delivered, being contained in the original packages in which it had been shipped; that the defendant sold no other liquors; that neither the said defendant nor said Hagemeister & Son had paid any tax in the village of Iron River aforesaid, on the business of selling or keeping for sale malt liquors at wholesale, or at wholesale and retail, nor given any bond such as is mentioned in act number 313 of the Public Acts for the State of Michigan, for 1887. Upon these conceded facts the court, refusing the request of respondent's council to instruct the jury to find a verdict of not guilty, instructed the jury to find a verdict of guilty.

Act No. 313, under which the plaintiff in error was prosecuted, is entitled, "An act to provide for the taxation and regulation of the business of manufacturing, selling, keeping for sale, furnishing, giving or delivering spirituous and intoxicating liquors, and malt, brewed, or fermented liquors and vinous liquors in this State."

Under section one of the act the following taxes upon the business of manufacturing, selling or keeping for sale by all persons, whose business, in

whole or in part, consists in selling or keeping for sale, or manufacturing distilled or brewed or malt liquors, or mixed liquors, are required to be paid in all townships, cities and villages of the State, "upon the business of selling or offering for sale spirituous or intoxicating liquors, or mixed liquors by retail, or any mixture or compound, excepting proprietary patent medicines, which in whole or in part consist of spirituous or intoxicating liquors, and any malt, brewed or fermented liquors, five hundred dollars per annum; upon the business of selling only brewed or malt liquors at wholesale or retail, or at wholesale and retail, three hundred dollars per annum; upon the business of manufacturing brewed or malt liquors for sale, sixty-five dollars per annum." It is further provided in that section that "no person paying a manufacturer's tax on brewed or malt liquors under this act shall be liable to pay a wholesale dealer's tax on the same."

Section two of the act provides that "wholesale dealers shall be held and deemed to mean and include all persons who sell or offer for sale such liquors and beverages in quantities of more than three gallons, or more than one dozen quart bottles at any one time to any person or persons."

Section seven of the act provides for the punishment of any person engaged in any business requiring the payment of a tax, under section one, without paying such tax, and gives to the circuit court jurisdiction in such cases.

By section twenty-four the criminal provisions of the act are extended to clerks, agents, etc.

It was contended in the State court by counsel for the respondent (plaintiff here) that the respondent was not liable unless Hagemeister & Son were liable, he acting only as their agent, and liable only as his principals were liable, and that Hagemeister & Son could not be held liable because they were not wholesale dealers within the meaning of the statute, and because, being importers, the act as to them was in contravention of Article 1, Section VIII, of the constitution of the United States.

It was also contended by counsel below that Hagemeister & Son, being manufacturers and importers, and having to pay, under the decision of the court, the tax which must be paid by wholesale dealers, the act operated as a discriminating provision between Hagemeister & Son as manufacturers, citizens of the United States, and residents of the State of Wisconsin, and manufacturers in this State, who had only to pay an annual tax of sixty-five dollars, and who, by the payment of such tax, were entitled to sell anywhere within the State of Michigan, while Hagemeister & Son must have paid an annual tax of three hundred dollars in every township, city or village in the State of Michigan where they desired to sell.

It was further contended by counsel in the State court that even though it were granted that the tax did not operate as a discrimination against Hagemeister & Son still it was an attempt to regulate

commerce between the States and in contravention of the constitution of the United States.

It is believed that Hagemeister & Son come within the term "wholesale dealer," as provided by the act. The act attempts to regulate the manufacture and sale of liquor within the State of Michigan. Hagemeister & Son were not manufacturers within the State of Michigan, but selling such quantities and in such manner as the statute provides shall be deemed to constitute a wholesale liquor business, they must come within that term, and if Hagemeister & Son come within the terms of the statute and within the meaning of the statute as wholesale dealers, then the respondent must be liable. For it cannot be said that there is any discrimination against Hagemeister & Son, by the terms of this statute. The statute does not attempt to regulate the manufacture of liquor in other states than Michigan, and because Hagemeister & Son are citizens of another State there is no discrimination against them, because as was ably presented by Judge Long in his opinion rendered in the State court, a citizen of the State of Michigan manufacturing outside of the State, and shipping his products to this State, under the circumstances under which Hagemeister & Son undertook to ship and sell their products, would come within the provision of the statute, and their business would be regulated by its terms applicable to wholesale dealers; nor is there any provision in the statute prohibiting Hagemeister & Son, or any other citizen of any

other State, from manufacturing liquor in the State of Michigan and selling it by the payment of the annual tax of sixty-five dollars provided by the statute. This being the case it can hardly be said that there is any discrimination in the statute, in favor of the citizens of the State of Michigan, against the citizens of any other State, nor can it be said that there is any discrimination against the products of the manufacturers of any other State, and the products of the manufacturers of the State of Michigan. Any wholesale dealer is at liberty to purchase his liquors anywhere he likes, bring them into the State, and sell them by paying the annual tax provided by the statute, and it makes no difference whether he purchases his liquor from the manufacturers of the State of Michigan, or from the manufacturers of the State of Wisconsin, or any other State, the amount of tax which he must pay is the same. That being true, there is no discrimination by the statute against either the citizens or the products of any other State.

When this property of Hagemeister & Son was stored in the warehouse at Iron River it is conceded that it was stored there for the purpose of wholesale, and when it was so stored it became, for the purposes of taxation, a portion of the property of the State, and the provision of the Federal constitution for the regulation of commerce between the States were at an end and it at once became subject to the laws which the State had enacted governing

its use or disposition, whether the sales were made or to be made in the original packages or not.

People vs. Lyng, 42 Northwestern Reporter, 142.

It must be conceded that under the previous holdings of this court the powers of police regulation of the State are sufficiently broad to allow the State to exercise the right which it has by its legislature attempted to exercise in the passage of this act, viz, the right to regulate the manufacture and sale of malt or spirituous liquors, and it is believed that in the exercise of that power no constitutional right of a citizen of the United States has been infringed.

For a careful consideration of this case and the decisions of this court bearing upon it see the opinion filed in the State court.

People vs. Lyng, 42 Northwestern Reporter, 139.

EDWARD CAHILL,
*Of Counsel for Defendant in Error.*

No. 1472.
Cunningham, Sheriff &c
v.
Dana Neagle
} f. 71

Exhibit A.

Fac simile of Mrs. Terry's pistol, mentioned in foregoing affidavits.

Fac simile of D. S. Terry's knife, mentioned in foregoing petition, opinion and affidavits.

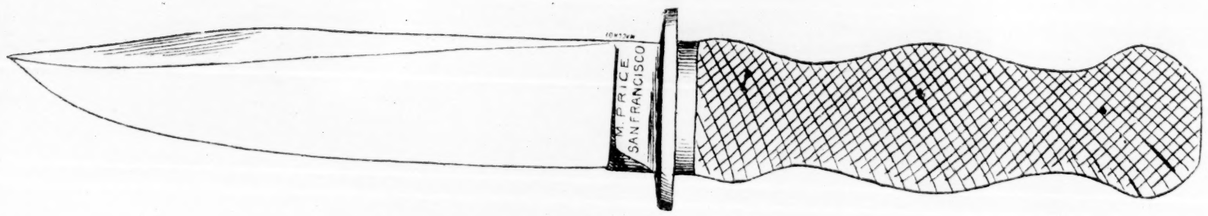
Endorsed: Terry's bf submitted
August 22, 89.

Avery C. White
Dist. Atty
San Joaquin County

Filed August 22, 1889
J. B. Sawyer, Clerk

130.

Fac simile of D. S. Terry's knife, mentioned in foregoing petition, opinion and affidavits.




Fac simile of Mrs. Terry's pistol, mentioned in foregoing affidavits.

No. 114 1/2.
Cumming's case
Sheriff vs.
T.
Neagle

No. 130

Endorsed: Fac simile of D. S. Terry's knife, mentioned in foregoing petition, opinion and affidavits.
& exhibits

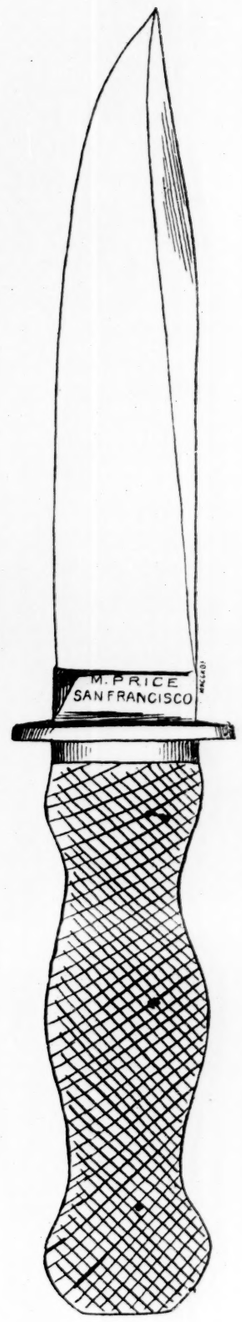
Fac simile of Mrs. Terry's pistol, mentioned in foregoing affidavits.

Filed Sept. 10, 1889.
L. A. Wilson, Clerk.

No. 1472.
Cunningham, Sheriff &c.
v.
N Neagle
} p. 810

Exhibit 5

Fac simile of Mrs. Terry's pistol, mentioned in foregoing affidavits.




Fac simile of D. S. Terry's knife, mentioned in foregoing petition, opinion and affidavits.

Endorsed: In Re David Neagle 10469
Exhibit No 5 D. D. M.
Dep. Clk